124-3

124 -396

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 249.

JOHN HOLLAND, APPELLANT,

vs.

MORRIS S. SHIPLEY AND EDWARD TYRRELL, DOING BUSINESS AS THE SHIPLEY-TYRRELL MANUFACTURING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED JULY 13, 1885.

8

124-390

124-390

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 249.

JOHN HOLLAND, APPELLANT,

vs.

MORRIS S. SHIPLEY AND EDWARD TYRRELL, DOING BUSINESS AS THE SHIPLEY-TYRRELL MANUFACTURING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED JULY 13, 1885.

Accession 21883

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 249.

JOHN HOLLAND, APPELLANT,

vs.

MORRIS S. SHIPLEY AND EDWARD TYRRELL, DOING BUSINESS AS THE SHIPLEY-TYRRELL MANUFACTURING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	3	1
Cost bond	13	4
Subpœna	15	5
Marshal's return	18	6
Appearance for defendants	19	6
Answer of Morris S. Shipley	21	7
Edward Tyrrell	26	8
Replication	31	10
Evidence for complainant	34	10
Testimony of Christian F. Rapp	35	11
Exhibit Rapp No. 2—Circular of the Shipley & Tyrrell Manufacturing Company	39	12
Testimony of Joseph Schwab	41	13
Exhibit A—Letters Patent No. 292313 granted J. Holland, January 22, 1884	50	16
Stipulation as to printed copies of patents, &c.	53	18
Notice to take oral testimony	54	19
Notice of motion for leave to file copy of file wrapper, &c.	55	19
Order granting leave to file copy of file wrapper, &c.	57	20

JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 9, 1887.

	Original.	Print.
Evidence for defendants	58	20
Holland file wrapper and contents	58	20
Letters Patent Nos. 2030, 33034 granted J. L. Faber, Aug. 13, 1861	97	34
No. 184035 granted O. Cleveland, Nov. 7, 1876	102	36
No. 96591 granted J. A. Kemmis, Nov. 9, 1869	104	38
No. 248520 granted D. M. Somers, Oct. 18, 1881	106	39
No. 23487 granted D. A. Pierce, April 5, 1859	109	39
No. 154345 granted A. Saunders, Aug. 25, 1874	113	44
No. 290291 granted E. Tyrrell, Dec. 18, 1883	115	46
Decree	117	48
Appeal bond	118	49
Citation	122	50
Proof of service of citation	122½	50
Clerk's certificate	123	51

1 At a stated term of the circuit court of the United States within and for the sixth judicial circuit and the western division of the southern district of Ohio, begun and held at the court-rooms in the city of Cincinnati, in the said division and district aforesaid, on the first Tuesday of April, being also the seventh day of that month, in the year of our Lord one thousand eight hundred and eighty-five, and in the one hundred and ninth year of the Independence of the United States of America—present, the Honorable Stanley Matthews, associate justice of the Supreme Court, and the Honorable George R. Sage, district judge—among the proceedings had were the following, to wit:

JOHN HOLLAND
vs.
MORRIS S. SHIPLEY and EDWARD TYRRELL. } In Equity. No. 3656.

2 Be it remembered that heretofore, to wit, on the twentieth day of June, in the year of our Lord one thousand eight hundred and eighty-four, came the said complainant herein, the said John Holland as aforesaid, by George J. Murray, Esq., his solicitor, and filed in the office of the clerk of the court aforesaid in this cause his certain bill of complaint against the said defendants herein, the said Morris S. Shipley and Edward Tyrrell as aforesaid, and which said bill of complaint so as aforesaid filed is clothed in the words and figures as follows, to wit:

3 *Bill of Compl't.*

Circuit Court of the United States, Southern District of Ohio, W. D.
In Equity.

JOHN HOLLAND *vs.* MORRIS S. SHIPLEY & EDWARD TYRRELL.

To the honorable the judges of the circuit court of the United States for the southern district of Ohio, western division:

John Holland, a citizen of the United States, residing at Cincinnati, Hamilton county, Ohio, brings this his bill of complaint against Morris S. Shipley and Edward Tyrrell, citizens of the State of Ohio, doing business as the Shipley-Tyrrell Manufacturing Company and residing at Cincinnati, Ohio, and thereupon your orator complains and says—

4 That heretofore and before the 22nd day of January, 1884, John Holland was the original, true, and first, sole inventor of a certain new and useful improvement in lead-holder for pencils fully described in the letters patent hereinafter mentioned, and which has not been known or used before his said invention, and which, at the time of his application for a patent, as hereinafter mentioned, had not been for more than two years in public use or on sale with his consent or allowance.

And your orator, on information and belief, further shows unto your honors that said John Holland, being so as aforesaid the first inventor and discoverer of said improvements, and being also a citizen of the United States, did, on the 22nd day of January, 1884,

upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid and numbered No. 292,313, whereby there was granted and secured to
said John Holland, his heirs, administrators, assigns, or in-
5 tended so to be, for the term of seventeen years from and after
the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvements as set forth in said letters patent, which are now remaining on record in the Patent Office of the United States, and by virtue whereof said John Holland became and now is the sole owner of all the rights and privileges granted and secured or intended to be granted and secured in and by said letters patent, as by said letters patent or a duly certified copy thereof here in court to be produced will fully and at large appear.

And your orator further shows unto your honors that by virtue of the premises he became and now is the sole and exclusive owner of said inventions and the letters patent and all improvements described therein and of all the rights and privileges granted and secured or intended to be granted and secured thereby, and that
since he became the owner thereof as aforesaid he has
6 invested and expended large sums of money and has been to
great trouble in and about said invention and for the purpose of carrying on the business of making pencil-cases containing said inventions and making the same profitable to himself and useful to the public, and that said invention has been and is of great benefit and advantage, and that he has made large quantities of lead pencils having lead-holders containing said invention, to the great advantage of the public, and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orator, and your orator believes that he will realize and receive large gains and profits therefrom if infringements by said defendants and their confederates shall be prevented ; yet said defendants, well knowing the premises and the rights secured to your orator aforesaid, but continuing to injure your orator and to deprive him of the benefits and advantages which might and otherwise would
accrue unto him from said invention after the issuing
7 of said letters patent as aforesaid, and before the commence-
ment of this suit, did, as your orator is informed and believes, without the license or allowance and against the will of your orator and in violation of his rights and in infringement of aforesaid letters patent, *did* in the said county of Hamilton, unlawfully and wrongfully and in defiance of the rights of your orator, make, construct, use, and vend to others to be used, the said invention, and did make, construct, use, and vend to others to be used, lead-holders made according to and employing and containing said invention, and that it still continues so to do, and that it is threatening to make the aforesaid lead-holders in large quantities and to supply the market

therewith and to sell the same, all in defiance of the rights acquired
by and secured to your orator as aforesaid and to his great and
irreparable loss and injury and by which he has been and still is
being deprived of great gains and profits which he might
8 and otherwise would have obtained, but which have been re-
ceived and enjoyed and are being received and enjoyed by
the said defendants by and through their aforesaid unlawful acts
and doings.

And your orator further shows unto your honors, on information and belief, that said defendants have made and sold large quantities of said lead-holders and have a large quantity on hand, which they are offering for sale, and have made and realized large profits and advantages therefrom, but to what extent and how much exactly your orator does not know and prays a discovery thereof.

And your orator says that the use of the said invention by said defendants and their preparation for and avowed determination to continue the same and their other aforesaid unlawful acts, in disregard and defiance of the rights of your orator, have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orator's rights.

And your orator further shows unto your honors that he
9 has caused notice to be given to said defendants of said in-
fringements and of the rights of your orator in the premises,
and requested them to desist and refrain therefrom, but they disregarded said notice and refused to desist from said infringements and still continue to make and sell said invention; and forasmuch as your orator can have no adequate relief, except in this court, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, according to their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orator the profits by them acquired and the damages suffered by your orator from the aforesaid unlawful acts;

And your orator prays that said defendants, their servants,
10 agents, attorneys, and workmen and each and every of them
may be restrained and enjoined provisionally and perpetually
by the order and injunction of this honorable court from directly or indirectly working or putting into practice, operation, or use or in anywise counterfeiting or imitating the said invention or any part thereof or any lead-holders made in accordance therewith or like or similar to those which they have heretofore made, and that the said defendants may be decreed to pay the costs of this suit, and that your orator may have such further relief or such other relief as to this honorable court shall seem meet and as shall be agreeable to equity—

May it please your honors to grant unto your orator the writ of injunction, as well provisional as perpetual, issuing out of and under

upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid and numbered No. 292,313, whereby there was granted and secured to said John Holland, his heirs, administrators, assigns, or in-
5 tended so to be, for the term of seventeen years from and after
the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvements as set forth in said letters patent, which are now remaining on record in the Patent Office of the United States, and by virtue whereof said John Holland became and now is the sole owner of all the rights and privileges granted and secured or intended to be granted and secured in and by said letters patent, as by said letters patent or a duly certified copy thereof here in court to be produced will fully and at large appear.

And your orator further shows unto your honors that by virtue of the premises he became and now is the sole and exclusive owner of said inventions and the letters patent and all improvements described therein and of all the rights and privileges granted and secured or intended to be granted and secured thereby, and that since he became the owner thereof as aforesaid he has
6 invested and expended large sums of money and has been to
great trouble in and about said invention and for the purpose of carrying on the business of making pencil-cases containing said inventions and making the same profitable to himself and useful to the public, and that said invention has been and is of great benefit and advantage, and that he has made large quantities of lead pencils having lead-holders containing said invention, to the great advantage of the public, and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orator, and your orator believes that he will realize and receive large gains and profits therefrom if infringements by said defendants and their confederates shall be prevented; yet said defendants, well knowing the premises and the rights secured to your orator aforesaid, but continuing to injure your orator and to deprive him of the benefits and advantages which might and otherwise would accrue unto him from said invention after the issuing
7 of said letters patent as aforesaid, and before the commence-
ment of this suit, did, as your orator is informed and believes, without the license or allowance and against the will of your orator and in violation of his rights and in infringement of aforesaid letters patent, *did* in the said county of Hamilton, unlawfully and wrongfully and in defiance of the rights of your orator, make, construct, use, and vend to others to be used, the said invention, and did make, construct, use, and vend to others to be used, lead-holders made according to and employing and containing said invention, and that it still continues so to do, and that it is threatening to make the aforesaid lead-holders in large quantities and to supply the market

therewith and to sell the same, all in defiance of the rights acquired
by and secured to your orator as aforesaid and to his great and
irreparable loss and injury and by which he has been and still is
being deprived of great gains and profits which he might
8 and otherwise would have obtained, but which have been re-
ceived and enjoyed and are being received and enjoyed by
the said defendants by and through their aforesaid unlawful acts
and doings.

And your orator further shows unto your honors, on information and belief, that said defendants have made and sold large quantities of said lead-holders and have a large quantity on hand, which they are offering for sale, and have made and realized large profits and advantages therefrom, but to what extent and how much exactly your orator does not know and prays a discovery thereof.

And your orator says that the use of the said invention by said defendants and their preparation for and avowed determination to continue the same and their other aforesaid unlawful acts, in disregard and defiance of the rights of your orator, have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orator's rights.

And your orator further shows unto your honors that he
9 has caused notice to be given to said defendants of said in-
fringements and of the rights of your orator in the premises,
and requested them to desist and refrain therefrom, but they disregarded said notice and refused to desist from said infringements and still continue to make and sell said invention; and forasmuch as your orator can have no adequate relief, except in this court, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, according to their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orator the profits by them acquired and the damages suffered by your orator from the aforesaid unlawful acts;

And your orator prays that said defendants, their servants,
10 agents, attorneys, and workmen and each and every of them
may be restrained and enjoined provisionally and perpetually
by the order and injunction of this honorable court from directly or indirectly working or putting into practice, operation, or use or in anywise counterfeiting or imitating the said invention or any part thereof or any lead-holders made in accordance therewith or like or similar to those which they have heretofore made, and that the said defendants may be decreed to pay the costs of this suit, and that your orator may have such further relief or such other relief as to this honorable court shall seem meet and as shall be agreeable to equity—

May it please your honors to grant unto your orator the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendants, Morris S. Shipley and Edward Tyrrell, and their servants, agents, attorneys, and workmen, and each and every of them, as hereinbefore in that behalf prayed.

11 May it please your honors to grant unto your orator the writ of subpœna, issuing out of and under the seal of this honorable court, directed to said defendants, Morris S. Shipley and Edward Tyrrell, commanding them, by a certain day and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises and to stand to and abide such order and decree as may be made against them.

And your orator will ever pray, &c.

JOHN HOLLAND.

GEO. J. MURRAY,
Sol'r and Counsel for Compl'ts.

12 UNITED STATES OF AMERICA,
Southern District of Ohio, } *ss:*

On this 20th day of June, 1884, before me personally appeared John Holland, the above-named complainant, who, being by me first duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to these matters he believes it to be true.

JOHN HOLLAND.

Sworn to before me and subscribed in my presence by the said John Holland the day and year aforesaid.

[SEAL.] ROBERT C. GEORGI,
Dep. Cl'k U. S. C. C., S. D. O.

13 And afterward, to wit, but on the same day and year as last aforesaid, the said complainant herein aforesaid filed in the clerk's office of the court aforesaid in this cause his certain bond for costs herein, and which said bond for costs so as aforesaid filed is clothed in the words and figures following, to wit:

Cost Bond.

In the Circuit Court of the United States for the Southern District of Ohio.

JOHN HOLLAND
vs. } No. 3656.
MORRIS S. SHIPLEY *et al.*

I hereby acknowledge myself security for costs in this case.
(Signed) CHARLES STEWART. [SEAL.]

Taken and acknowledged before me the 20th day of June, 1884.
[L. S.] (Signed) ROB'T C. GEORGI,
Dep. Clerk U. S. Circuit Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Charles Stewart, a resident of said district, do solemnly swear that, after paying my just debts and liabilities, I am worth five thousand dollars in real estate within the jurisdiction of this 14 court and subject to execution, levy, and sale.

(Signed) CHARLES STEWART.

Sworn to and subscribed before me this 20th day of June, A. D. 1884.

[L. S.] (Signed) ROB'T C. GEORGI,
Dep. Clerk U. S. Circuit Court, S. D. O.

15 And afterward, to wit, but on the same day and year as last aforesaid, there was issued out of the clerk's office of the court aforesaid in this cause our certain writ of subpœna in chancery, directed to the marshal of the United States within and for the district aforesaid and against the said defendants herein, the said Morris S. Shipley and Edward Tyrrell as aforesaid, and which said writ of subpœna so as aforesaid issued and directed is clothed in the words and figures as follows, to wit:

Subpœna.

UNITED STATES OF AMERICA, *Southern District of Ohio,* } *ss:*

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon Morris S. Shipley and Edward Tyrrell, doing business as the Shipley-Tyrrell Manufacturing Company, citizens of and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in September next, to answer a certain 16 bill in chancery filed and exhibited against them by John Holland, citizen of and resident in the State of Ohio.

Hereof you are not to fail under the penalty of the law thence ensueing, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this twentieth day of June, A. D. 1884, and in the 108th year of the Independence of the United States of America.

Attest:

[L. S.] (Signed) WM. C. HOWARD, *Clerk.*

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of August, 1884; otherwise the said bill may be taken *pro confesso.*

(Signed) WM. C. HOWARD, *Clerk.*

17 (Endorsed :) Charles Stewart acknowledges himself security for all costs for which the plaintiff may be liable in this suit.

18 And afterwards, to wit, on the twenty-first day of June, in the year last aforesaid, came the said marshal of the district aforesaid, to whom was, in form aforesaid, directed the foregoing writ of subpœna in this cause so as aforesaid heretofore issued out of the said the clerk'- office of the court aforesaid against the said defendants herein aforesaid, and returned the same into the said the clerk's office of the court aforesaid, with his proceedings thereon endorsed, clothed in the words and figures as follows, to wit:

Return.

Received this writ at Cincinnati, O., June 20th, 1884, and served the same in Cincinnati, O., as follows: On the within-named Morris S. Shipley and Edward Tyrrell, doing business as the Shipley-Tyrrell Manufacturing Company, by delivering a true copy hereof to each of them personally.

June 20th, 1884.

(Signed) LOT WRIGHT, *U. S. M.*,
By C. E. TWIFERD, *Dep.*

19 And afterward, to wit, on the twenty-seventh day of June, in the year last aforesaid, the appearance of defendants' solicitors herein was entered in the clerk's office of said court in the words and figures clothed as follows, to wit:

Appearance of Def'ts.

SOUTHERN DISTRICT OF OHIO:

United States Circuit Court.

JOHN HOLLAND
vs.
M. S. SHIPLEY *et al.*
No. 3656.

To William C. Howard, clerk of said court:

Please enter our appearance for the defendants.

(Signed) WOOD & BOYD,
Attorneys for —.

20 And afterward, to wit, on the first day of September, in the year last aforesaid, came the said defendant herein, the said Morris S. Shipley as aforesaid, by Wood and Boyd, his solicitors as aforesaid, and filed in the clerk's office of the court aforesaid in this cause his certain answer herein to the aforesaid bill of complaint in this cause so as aforesaid heretofore filed in the said the clerk's office

of the said court, and which said answer so as aforesaid filed is clothed in the words and figures as follows, to wit:

21 *Answer of Def't Morris S. Shipley.*

Circuit Court of the United States, Southern District of Ohio,
Western Division. In Equity.

JOHN HOLLAND
vs. } No. 3656.
MORRIS S. SHIPLEY *et al.*

The answer of Morris S. Shipley, one of the defendants, to the bill of complaint of John Holland, complainant.

The defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material or necessary for him to make answer to, answering, says:

That he denies that the complainant has expended large sums of
money in and about said improvements, or that the same are of
great or any value by reason of any invention of his; he admits
22 that the defendants are engaged in the manufacture and sale
of pencils and pencil-holders, and that prior to the date of complainant's said patent they made and sold pencil-holders embodying the invention so unjustly as aforesaid patented to the complainant, but denies that the pencil-holders they have now on hand and are offering for sale or those they have made and sold since the date of complainant's said patent infringe said patent or any rights of the complainant thereunder.

This defendant, for further answer, says that the thing shown and described in complainant's patent did not involve invention within the meaning of the patent law, but was an old and well-known device in prior public use on various articles used in the industrial arts of the United States; that the equivalent of said patented device is shown and described in various patents of the United States, to wit:

Letters patent No. 33034, granted Tabor Aug. 13, 1861;
" 184,035, granted Cleveland Nov. 7, 1876;
" 96597, granted Kemmis Nov. 9, 1869;
23 " 248,520, granted Sommer Oct. 18, 1881;
" 23487, granted Pierce April 6, 1859;
" 154,343, " Saunders Aug. 25, 1874—

And in various other patents and books of reference.

Affiant says that it is very common in very many of the arts to use serrated clamping devices for the holding of articles; that therefore said patent granted complainant is void.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WOOD & BOYD,
Sol'rs for Def't Shipley.

24 UNITED STATES, Southern District of Ohio, } *ss:*

Morris S. Shipley, having duly affirmed, says that he is one of the defendants in the above-entitled cause; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

MORRIS S. SHIPLEY.

Affirmed before me and subscribed in my presence this 29th day of August, 1884.

[SEAL.] ROBERT ZAHNER,
Notary Public, Hamilton County, Ohio.

25 And afterwards, to wit, but on the same day as last aforesaid, came the said defendant herein, the said Edward Tyrrell as aforesaid, by Wood and Boyd, his solicitors aforesaid, and filed in the clerk's office of the said court in this cause his certain answer to the said bill of complaint herein, so as aforesaid heretofore filed in this cause in the said the clerk's office of the court aforesaid, and which said answer so as aforesaid filed is clothed in the words and figures as follows, to wit:

26 *Answer of Def't Edward Tyrrell.*

Circuit Court of the United States, Southern, District of Ohio, Western Division. In Equity.

JOHN HOLLAND
vs.
MORRIS S. SHIPLEY *et al.* } No. 3656.

The answer of Edward Tyrrell, one of the defendants, to the bill of complaint of John Holland, complainant.

The defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material or necessary for him to make answer to, answering, says:

He admits that letters patent No. 292,313 were granted to the complainant January 22nd, 1884, but denies that the complainant was the true or original and first inventor of the improvements

27 claimed therein, and says that said patent was surreptitiously and unjustly obtained for that which was, in fact, invented by this defendant, who was using reasonable diligence in adapting and perfecting the same, and for which letters patent of the United States No. 290,291, dated December 18th, 1883, were granted to him. He denies that the complainant has expended large sums of money in and about said improvements, or that the same are of great or any value by reason of any invention of his.

He admits that the defendants are engaged in the manufacture and sale of pencils and pencil-holders, and that prior to the date of complainants' said patent, they made and sold pencil-holders embodying the invention so unjustly as aforesaid patented to the complainant, but denies that the pencil-holders they have now on hand and are offering for sale or those they have made and sold since the date of complainants' said patent infringe said patent or any rights of the complainant thereunder.

28 And the defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WOOD & BOYD,
Solicitors for Def't Tyrrell.

UNITED STATES,
Southern District of Ohio, } *ss:*

Edward Tyrrell, being duly sworn, says that he is one of the defendants in the above-entitled cause; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

EDWARD TYRRELL.

29 Sworn to before me and subscribed in my presence this 29th day of August, 1884.

[SEAL.] ROBERT ZAHNER,
Notary Public, Hamilton County, Ohio.

30 And afterward, to wit, on the eighteenth day of September, in the year last aforesaid, came the said complainant herein aforesaid, by his said solicitor aforesaid, and filed in the clerk's office of the said court in this cause the certain replication of said complainant to the answers of said defendants herein aforesaid, so as aforesaid heretofore filed in the said the clerk's office of said court

in this cause, and which said replication so as aforesaid filed is clothed in the words and figures following, to wit:

31 *Replication.*

Circuit Court of the United States, Southern District of Ohio,
Western Division. In Equity.

JOHN HOLLAND
vs.
MORRIS S. SHIPLEY and EDWARD TYRRELL. } No. 3656.

The replication of John Holland, complainant, to the answers of Morris Shipley and Edward Tyrrell, the defendants.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers, for replication thereunto says that he will ever, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answers of the said defendants are, and each of them is, untrue and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answers or either of them
32 contained material or effectual in the law to be replied unto,
and not well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

GEORGE J. MURRAY,
Solicitor for Complainant.

33 And afterwards, to wit, on the seventeenth day of December, in the year last aforesaid, came the said complainant herein aforesaid, by his said solicitor aforesaid, and filed in the clerk's office of the said court in this cause certain depositions of sundry witnesses theretofore taken in this cause on behalf of the said complainant, pursuant to the notice thereto annexed, before David S. Oliver, Esq., notary public in and for the county of Hamilton and State of Ohio, acting as special examiner, and which said depositions so as aforesaid filed are clothed in the words and figures as follows, to wit:

34 *Depositions on Behalf of Compl't.*

Circuit Court of the United States, Southern District of Ohio,
Western Division. In Equity.

JOHN HOLLAND
vs.
MORRIS S. SHIPLEY *et al.* } No. 3656.

The defendants will take notice that the complainant will examine witnesses in the above-named cause under the 67th rule in equity, as amended, before David S. Oliver, Esq., notary public and acting special examiner, at the office of George J. Murray, room 28, Wiggins' block, Cincinnati, Ohio, on Saturday, the 13th day of December, 1884, beginning said examination at 10 o'clock a. m. of said day and continuing from day to day until completed.

GEO. J. MURRAY,
Sol'r for Comp'ts.

Received copy Dec. 12th, 1884.

WOOD & BOYD.

35 Circuit Court of the United States, Southern District of Ohio, Western Division. In Equity.

John Holland
vs.
Morris S. Shipley *et al.*
No. 3656.

Depositions in the above-named cause, taken pursuant to the notice hereto annexed, at the time and place therein mentioned, before me, David S. Oliver, a notary public in and for the county of Hamilton and State of Ohio.

George J. Murray was present on behalf of the plaintiff and Edward Boyd on behalf of defendants.

Christian F. Rapp, being by me first duly sworn, deposes and says as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. 1. Christian F. Rapp; thirty-five years old; residence, Cumminsville; am solicitor for the Chas. Ruhl Artificial Stone Company.

2. Please state whether or not you have purchased at any 36 time from the Shipley and Tyrrell M'f'g Co. of this city a pencil-case having the lead-holder at one end, which consists of a tube and internal or female threads, the said tube or holder being slotted longitudinally and clasped down upon the lead by the point section of the pencil-case.

Ans. 2. I have purchased such a pencil.

Ques. 3. Please state when and where and under what circumstances you made such purchase, and if you still have the pencil-case please hand it to the notary to be offered in evidence in this case.

Ans. 3. I called at the office of Geo. J. Murray in regard to some legal business of the company by which I am employed. Mr. Murray asked me to purchase a pencil at the Shipley & Tyrrell M'f'g Co. having the female thread in the tube to hold the lead. I purchased the same and shewed it to Mr. Murray on my return.

The reason Mr. Murray asked me to purchase the pencil 37 was that he had been instructed to bring suit for John Holland against the Shipley and Tyrrell M'f'g Co. and he wanted to be certain that they were infringers. I purchased the pencil on the 22nd day of April, 1884, at the Shipley & Tyrrell M'f'g Company's store, on Fourth street. This is the pencil I purchased, and I herewith hand it to the notary as requested.

The pencil produced by witness is herewith offered in evidence and the notary is requested to mark the same "Rapp Exhibit the Shipley and Tyrrell Pencil-Case."

4. How are you able to fix the date of purchasing said pencil-case as above given? Also state, if you know, from whom you made the purchase.

Ans. 4. I made a memorandum of the purchase in my book at the time, and recently refreshed my memory by consulting the book, and I know it to be a fact that I purchased it that day at 149 West Fourth St. from Miss Hannah Tyrrell.

5. Where has this pencil-case been from the time you
38 bought it up to the time you offered it in evidence to-day?

Ans. 5. When I was living on Elm street it was locked up in a wardrobe, and when I moved to Cumminsville it was in my book-case. It remained in those places unless I had it with me; it never left my possession.

6. Please state at the time of the purchase if you received any circulars or description of the pencil-case, and if you did please hand the same to the notary to be made a part of your deposition.

Ans. 6. I did receive several copies of such description, and herewith offer one of them as requested.

The slip handed to notary by witness is herewith offered in evidence and the notary is requested to attach it to the deposition and mark the same "Complainant's Exhibit Rapp No. 2."

Objected to as irrelevant.

7. Are you acquainted with Edward Tyrrell, one of the parties to this cause?

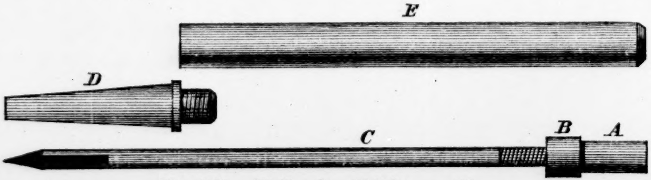
I think I have met him at Mr. Holland's, but I have no recollection of ever conversing or speaking to him.

8. State, if you know, whether the Miss Tyrrell from whom you purchased the pencil-case is a relative of the Edward Tyrrell in the previous answer.

She is known as his daughter.

CHRISTIAN F. RAPP.

(Here follows diagram marked p. 39.)



No. 249. Holland *v.* Shipley, p. 39.

39 COMPLAINANT'S EXHIBIT RAPP NO. 2.

THE SHIPLEY & TYRRELL M'F'G CO.,
147 & 149 WEST FOURTH ST., CINCINNATI, OHIO.

(Reverse.)

The adjustable "H. R." pencil is made of the best vulcanized rubber; has no springs or washers to wear or loosen; no varnish to come off; no soft solder; no cheap plate; nothing to break.

The only good, all hard-rubber pencil within the reach of the people.

To operate the pencil: Unscrew the point (D), holding it downward. The lead will drop forward, and can then be secured as desired by screwing up the point (D).

To adjust the pencil to a small lead, remove the lead tube (*c*) from the holder (E) by a firm pull; loosen the cap screw (*a*); move the check nut (*b*) up to it to form a lock. The reverse for a large lead.

For sale by the trade generally.

Sent by mail, postage paid, on receipt of price—25 cts.

THE SHIPLEY AND TYRRELL MANUFACTURING CO.,
147 & 149 *West Fourth St., Cincinnati, O.*

Have you seen the Tyrrell pen? It is perfect. Send postal for full description.

(over)

40 Complainant's counsel herewith offer in evidence printed Patent Office copy of the specification and drawings of letters patent of United States, No. 292,313, for lead-holder for pencils, granted to John Holland, and dated Jan. 22, 1884. Notary will mark the same "Complainant's Exhibit A."

41 JOSEPH SCHWAB, being first duly sworn, deposes and says as follows:

1. State your name, age, residence, and occupation.

Joseph Schwab, age 29, reside at Third and Main —; am a pencil-case maker.

2. State where you are engaged at present, how long you have been so engaged, and state by whom you were employed prior to your present engagement, and how long you had been so employed.

I am at present engaged at John Holland's, and have been since September 12, 1884; was employed formerly by Shipley and Tyrrell from Oct. 12, 1883, to about Aug. 1st, 1884.

3. The Shipley and Tyrrell by whom you were employed formerly are the gentlemen now present?

Yes, sir.

4. Please examine pencil-case now handed you and marked "Rapp Exhibit the Shipley and Tyrrell Pencil-Case." Your attention is particularly directed to the lead-holder or tube. State if you know or if you are familiar with pencil-cases so con- 42

structed—that is, having the lead tube screw threaded in the inside and slotted longitudinally as is the tube in said exhibit.

Yes, sir.

5. When and where did you first become familiar with pencil-cases having the lead-holding tube made as is the tube in said exhibit?

I have not seen a pencil made like this only in one part of it.

6. State what part that is and how this one differs from the pencil-cases you have seen with the one part like the part in this pencil-case.

It is altogether different, with the exception of the end of the tube. It has three slots, the same as the other, and it has the inside screw.

7. Where and when did you first become familiar with the pencil-cases having the inter*v*al screw thread in the tube and the tube slotted like the pencil-case marked "Rapp Exhibit Shipley & Tyrrell Pencil Case."

43 About two years ago, at John Holland's.

8. Have you ever made pencil-cases having the lead tube made like the pencil-case here offered in evidence? And, if you have, please state when and where you have made such pencil-cases.

I made a few for the Shipley & Tyrrell Co. while I was in their employ.

9. When did you make the first for the Shipley and Tyrrell Co. and when the last?

About the latter part of Oct., 1883, I made the first and about the middle of April, 1884, the last.

10. What was the purpose of screw threading the tube and slotting it in the cases you made while employed by the Shipley & Tyrrell Co.?

Objected to as irrelevant and incompetent.

To hold the lead firmly and stationary.

Cross-examination:

11. Were you in the employ of John Holland when you saw the pencil-cases about two years ago?

Yes, sir.

44 12. Was the defendant, Edward Tyrrell, in his employ also at the same time?

Not at that time; I have made a mistake as to the time I first saw it. It must be between three and four years since I saw that pencil-case; Mr. Tyrrell was in Mr. Holland's employ at that time.

13. Did Mr. Tyrrell superintend the manufacture of pencils at that time for Mr. Holland?

Yes, sir.

14. Did you see Mr. Tyrrell make a pencil-holder with inter*v*al threads and slots at Mr. Holland's?

I do not know how to answer that question. I mean do you want to know whether Mr. Tyrrell made it himself or had it made?

15. I mean whether you saw Mr. Tyrrell personally working on such a pencil at any time.

Yes, sir; I have seen him working on different things about it—that is, the different parts.

16. Do you remember the pencil-holders made by Mr.
45 Holland before the internal thread was adopted?

Objected to as not proper on cross-examination.

Yes, sir.

17. Do you remember the first holder made with the internal thread?

I can't say I remember the first one, but I do the first lot.

18. Do you rem-ber the circumstances under which the first one or the first lot were gotten up?

I remember of Mr. Tyrrell showing me a tube with a screw in it and saying he wouldn't have any more trouble with them.

19. Who made the screw in that tube?

Objected to as immaterial.

I do not know.

20. Where did Mr. Tyrrell show you the tube?

At Mr. Holland's factory, at my lathe.

21. Had it just been made?

I think it had.

22. Did you see Mr. Tyrrell at work then, just before he showed it to you?

46 He was working then; yes, sir.

23. What was he working on?

I do not know of anything special; only superintending the factory.

24. Was there a man named William Flynn at work in the shop at that time?

Yes, sir.

25. When Mr. Tyrrell showed you the tube had he not just brought it from Flynn's lathe?

No, sir.

26. Where did he bring it from?

From Mr. Holland, in the office.

27. How do you know he brought it from Mr. Holland?

Mr. Tyrrell told me.

28. What was the language used by Mr. Tyrrell?

He said: "Joe, we will have no more trouble with our points."

29. Did not Mr. Tyrrell at that time tell you that he had just made the change that would obviate all trouble with the points?

I do not remember of his saying that.

47 30. Did he at any time say that, substantially?

He said he had studied over it and worked it out.

31. Was this before the first lot was made for the market?

No, I think not; I mean to say none had gone into market.

32. Do you wish to be understood as saying that none had gone into the market at the time Mr. Tyrrell told you he had studied over the change and worked it out?

Yes, sir.

JOSEPH J. SCHWAB.

UNITED STATES OF AMERICA,
State of Ohio, Hamilton County, } *ss:*

I, David S. Oliver, a notary public in and for the county of Hamilton, State of Ohio, by consent of counsel acting examiner in the above cause, do hereby certify that the foregoing depositions 48 of Christian F. Rapp and Jos. J. Schwab were taken on behalf of the complainants pursuant to the notice hereto annexed at the time and place mentioned therein; that the said witnesses were duly sworn and examined and the depositions of said witnesses were reduced to writing and read to them by me and by them subscribed in my presence; that the several exhibits referred to in said evidence were introduced into evidence and identified by my signature; that George J. Murray appeared on behalf complainants and Edward Boyd on behalf of defendants; that I am not connected by blood or marriage with either of said parties nor interested, directly or indirectly, in the matter in controversy.

In witness whereof I have hereunto set my hand and affixed my official seal this 13th day of December, 1884.

[SEAL.] DAVID S. OLIVER,
Notary Public, Hamilton County, Ohio.

49 And afterward, to wit, on the seventh day of May, in the year of our Lord one thousand eight hundred and eighty-five, the complainant herein aforesaid, by his said solicitor aforesaid, filed in the clerk's office of said court in this cause his certain Exhibit "A" referred to in the foregoing depositions of Christian F. Rapp, as introduced in evidence on the taking of said depositions, and which said Exhibit "A" so as aforesaid filed is in the words and figures clothed as follows, to wit:

(Here follows diagram marked p. 50.)

51 COMPLAINANT'S EXHIBIT A. David S. Oliver, Notary Public.

UNITED STATES PATENT OFFICE.

JOHN HOLLAND, of Cincinnati, Ohio.

Lead-Holder for Pencils.

Specification forming part of Letters Patent No. 292,313, dated January 22, 1884. Application filed March 18, 1882. (No model.)

To all whom it may concern:

Be it known that I, John Holland, of Cincinnati, county of Hamilton, State of Ohio, have invented certain new and useful improvements in lead-holders for pencils, of which the following is a specification.

The object of my present invention is to hold the lead or crayon in pencils from slipping back within the tube when pressed upon by the act of writing, without danger of breaking the lead.

Lead-tubes now in common use are usually slotted at the lower end to form elastic clamping-fingers, which fingers are closed upon

(No Model.)

J. HOLLAND.

LEAD HOLDER FOR PENCILS.

No. 292,313. Patented Jan. 22, 1884.

Fig. 1

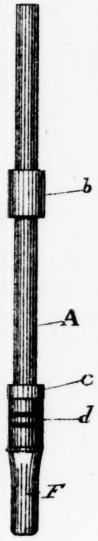


Fig. 2

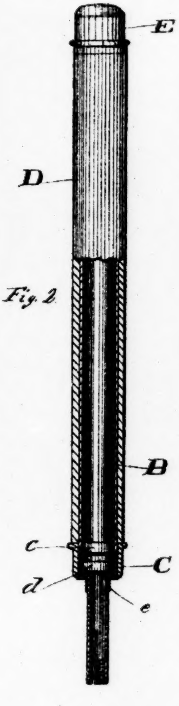
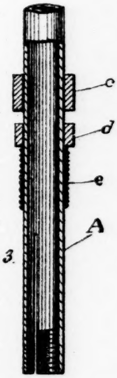


Fig. 3.



No. 249.
Holland
v
Shipley et al.
} p. 50

ATTEST

Horatio V Croll

M. W. Olives

INVENTOR

John Holland

By Geo J Murray

Atty

the lead near its point end by a sleeve or tube which moves longitudinally over the the fingers. These fingers are either smooth upon the inside or terminate at their ends in sharp inward projections or claws. The first kind soon become so smooth that the lead slips back when borne upon in the act of writing and the second frequently breaks the lead when the clamping-sleeve is tightened up, and when tightened up carefully the lead often breaks in use when writing with the pencil inclined. I overcome both of these objections by making a fine screw-thread within the lower end of the tube before it is slotted to form the clamping-fingers.

In the accompanying drawings figure 1 is an elevation of the lead tube detached from the case and having the clamping-sleeve in position. Fig. 2 is a central vertical section of the lower part of the case and the lower end of the slotted lead-tube. The upper portion of the case and the lead-tube are shown in elevation. Fig. 3 is a longitudinal central section of the lower part of the lead-tube greatly enlarged. In this view, as in Fig. 2, the clamping-sleeve is removed.

The lead-tube A is provided with three collars, *b*, *c*, and *d*.

To the collars *c* and *b* is secured a tube, B, and upon this is secured the outer finish of the case, as follows: The perforated lower cap, C, is soldered or otherwise suitably secured upon the lower end of said tube B. The outer shell, D, is slipped over tube B until it strikes the lower cap, leaving the upper end of said tube B exposed to receive the cap E, which is slipped down against the upper end of tube D and suitably secured. The lower end of lead-tube A is internally tapped with a fine screw-thread, after which the tube is slotted up, dividing the lower end into three elastic fingers. Above the slots in the tube is a small screw-threaded tube, *e*, to receive the internal screw in the upper end of the clamping-sleeve, F, which is screwed over the lower end of tube A until stopped against the collar *d*.

The clamping-fingers may, instead of being screw-threaded upon the inside, be serrated or roughened to accomplish the same result; but the screw-thread is much better, because by this means a uniformly-even roughened surface can be made within the lower end of the tube at comparatively small expense; and as these pencils are designed to take the place of the common lead pencil, they must be made cheaply to insure their introduction into general use.

I am aware that it is old to provide a pencil-case for holding ordinary lead pencils with a sliding ring, to which are secured spring-clamps having their holding-surfaces serrated and having their shanks bent to approach each other, then jut outwardly and downwardly at their free ends, so that a ring-slide may be moved upon said shanks to cause the free ends of the clamps to grasp or release a pencil; and I am also aware that it is old to provide the lead-holding tube of a pencil with an interior thread and a single slot. I therefore do not claim any of these devices.

I claim as my invention—

1. As a new article of manufacture, a lead-tube for pencils consisting, substantially as before set forth, of a tube provided at one end with internal or female threads and two or more longitudinal slots to form threaded fingers.

2. The combination, with the lead-tube provided at one end with internal threads and two or more longitudinal slots, of a clamping-sleeve adapted to be adjusted upon the slotted end of the tube to press the threaded fingers upon a lead, substantially as described.

JOHN HOLLAND.

Witnesses:
M. W. OLIVER,
GEO. J. MURRAY.

52 And afterward, to wit, but on the same day as last aforesaid, came the said complainants herein aforesaid, by his said solicitor aforesaid, and filed in the said the clerk's office — the court aforesaid in this cause his certain exhibit, marked "Rapp Exhibit the Shipley and Tyrrell Pencil-Case—David S. Oliver, notary public," referred to in the aforesaid deposition of Christian F. Rapp, as introduced in evidence on the taking of said depositions aforesaid.

53 And on, to wit, the seventeenth day of December, in the year of our Lord one thousand eight hundred and eighty-four, came the said parties herein aforesaid, by their solicitors as aforesaid, and filed in the clerk's office of the court aforesaid in this cause their certain stipulation, and which said stipulation so as aforesaid filed is clothed in the words and figures following, to wit:

Stipulation.

Circuit Court of the United States, Southern District of Ohio, W. D.
In Equity.

JOHN HOLLAND
vs. } No. 3656.
MORRIS S. SHIPLEY *et al.*

It is hereby agreed and stipulated by and between the parties hereto that printed copies of drawings and specifications furnished by the Patent Office may be introduced in evidence and used at the hearing of this cause with the same force and effect as if duly certified by the Commissioner of Patents to be true and correct copies.

(Signed) GEORGE J. MURRAY,
Complainant's Sol'or.

(Signed) WOOD & BOYD,
Sol's for Def'ts Shipley and Tyrrell.

54 And afterward, to wit, but on the same day and year as last aforesaid, there was filed in the clerk's office of the court aforesaid in this cause, by the said solicitor of the said complainants herein aforesaid, his certain notice to take testimony orally, and which said notice so as aforesaid filed is clothed in the words and figures as follows, to wit:

Notice to Take Oral Testimony.

United States Circuit Court, Southern District of Ohio, W. D. In Equity.

JOHN HOLLAND
vs.
MORRIS S. SHIPLEY *et al.* } No. 3656.

You will please take notice that the complainant in the above cause desires the evidence to be produced therein to be taken orally, under the 67th rule of the Supreme Court, as amended.

Yours respectfully,
(Signed) GEO. J. MURRAY,
Sol'or for Comp't.

To Wood & Boyd, sol'ors for def'ts.

Rec'd copy this 4th day of December, 1884.
(Signed) WOOD & BOYD.

55 And afterward, to wit, on the twenty-second day of April, in the year of our Lord one thousand eight hundred and eighty-five, the said defendants herein aforesaid, by their said solicitors aforesaid, filed in the said the office of the clerk of the court aforesaid in this cause their certain notice herein of their motion for leave to file herein, and which said notice so as aforesaid filed is clothed in the words and figures as follows, to wit:

Notice of Def'ts' Motion for Leave, &c.

United States Circuit Court, Southern District of Ohio. In Equity.

JOHN HOLLAND
vs.
M. S. SHIPLEY *et al.* } No. 3656.

Take notice that on Saturday next, or as soon thereafter as counsel can be heard, the defendants will move for leave to file a certified copy of the file w-apper and contents in the matter of the application of the complainant for the patent sued on, together with copies of the letters patent set up in the answer, to be used as evidence at the hearing, which is assigned for May 7th.

Yours, &c., (Signed) WOOD & BOYD.

Dated April 22, 1885.
56 Geo. J. Murray, Esq., compl't's solicitor.

Copy received this 22d day of April, 1885, but all rights to exceptions reserved.
(Signed) GEO. J. MURRAY,
Sol'c'r for Compl't.

57 And afterward, to wit, on the twenty-fifth day of April, in the year last aforesaid, an entry was made upon the journal of the court aforesaid in this cause, and which said journal entry so as aforesaid made is clothed in the words and figures as follows, to wit:

Order.

Journal entry, W. 107.

John Holland
vs. } Chancery No. 3656.
M. S. Shipley *et al.*

Upon motion of the defendants, and upon hearing counsel for both parties, it is ordered that the defendants be, and they are hereby, allowed to file a certified copy of the file wrapper and contents in the matter of the application of the complainant for the patent sued on, together with copies of the letters patent set up in the answers, and that the same may be used at the hearing with the same effect as if regularly offered before a special examiner.

58 And thereupon, afterward, to wit, but on the same day as last aforesaid, the said defendants herein aforesaid, by their said solicitors aforesaid, filed in the clerk's office of the court aforesaid in this cause the certain file wrapper and contents referred to in the foregoing order so as aforesaid heretofore made upon the journal of the said court in this cause, and which said file wrapper and contents so as aforesaid filed is clothed in the words and figures as follows, to wit:

Holland File Wrapper and Contents.

Department of the Interior,
United States Patent Office.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the letters patent granted John Holland January 22d, 1884, number 292,313, for improvement in lead-holder for pencils.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be affixed 59 this 12th day of July, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

[L. S.] (Signed) BENJ. BUTTERWORTH,
Commissioner.

[Written in pencil:] $15. M.

60 To the Commissioner of Patents:

Your petitioner, a resident of the city of Cincinnati, county of Hamilton, and State of Ohio, prays that letters patent may be granted to him for the invention set forth in the annexed specification, and he hereby appoints Geo. J. Murray, of said Cincinnati, Ohio, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

61 Hon. Commissioner of Patents:

Please recognize Chas. A. Neale, of Washington, D. C., as my associate attorney to prosecute this application.

—— ——.

62 To all whom it may concern:

Be it known that I, John Holland, of Cincinnati, county of Hamilton, State of Ohio, have invented certain new and useful improvements in lead-holders for pencils, of which the following is a specification:

The object of my present invention is to hold the lead or crayon in pencils from slipping back within the tube when pressed upon by the act of writing without danger of breaking the lead.

Lead tubes now in common use are usually slotted at the lower end to form elastic clamping fingers, which
Am'd't, May 16, '82. fingers are closed upon the lead (near its point end) by a sleeve or tube, which moves along longitudinally over the fingers. These fingers are either smooth upon the inside or terminate at their ends in sharp inward projections or claws. The first kind soon become so smooth that the lead slips back when borne upon in the act of writing, and the second frequently breaks the lead when the clamping sleeve is tightened
up, and when tightened up carefully the lead often breaks in
63 use, when writing with the pencil inclined. I overcome both
of these objections by marking a fine screw thread within the
64 lower end of the tube before it is slotted to form the clamping fingers.

In the accompanying drawings Fig. 1 is an elevation of the lead tube detached from the case and having the clamping sleeve in position.

Fig. 2 is a central vertical section of the lower part of the case and the lower end of the slotted lead tube. The upper portion of the case and the lead tube are shown in elevation.

Fig. 3 is a longitudinal central section of the lower part of the lead tube greatly enlarged. In this view, as in Fig. 2, the clamping sleeve is removed.

The lead tube A is provided with three collars, *b*, *c*, and *d*. To the collars *c* and *b* is secured a tube, 3, and upon this is secured the outer finish of the case as follows: The perforated lower cap C is soldered or otherwise suitably secured upon the lower end of the tube B; the outer shell D is slipped over tube B until it strikes the lower cap, leaving the upper end of said tube B exposed to receive
the cap E, which is slipped down against the upper
65 end of tube D and suitably secured; the lower end of lead
66 tube A is internally tapped with a fine screw thread; after

which the tube is slotted up, dividing the lower end into three elastic fingers. Above the slots in the tube is a small, screw-threaded tube, *e*, to receive the internal screw in the upper end of the clamping sleeve F, which is screwed over the lower end of tube A until stopped against the collar *d*. The clamping fingers may, instead of being screw-threaded upon the inside, be serrated or roughened to accomplish the same result; but the screw thread is much better, because by this means a uniformly-even roughened surface can be made within the lower end of the tube at comparatively small expense, and as these pencils are designed to take the place of the common lead pencil, they must be made cheaply to insure their introduction into general use.

Insert A, May 16, 1882.

I claim as my invention—

[The lead tube A, internally threaded and longitudinally slitted at the lower end, in combination with a pencil case adapted to receive said tube and a clamping sleeve, F, to press the threaded fingers upon the lead, substantially as specified.]*

Erase & insert B, May 16, 1882.

---

67 JOHN HOLLAND.

Witnesses:
M. W. OLIVER.
GEO. J. MURRAY.

68 STATE OF OHIO, *County of Hamilton*, } *ss:*

John Holland, the above-named petitioner, a citizen of the United States and a resident of Cincinnati, county of Hamilton, State of Ohio, being duly sworn, deposes and says that he verily believes himself to be the original, first, and sole inventor of the improvement in lead-holders for pencils described and claimed in the foregoing specification; that the same has not been patented to him or to others with his knowledge or consent in any country; that the same has not, to his knowledge, been in public use or on sale in the United States for more than two years prior to this application, and that he does not know and does not believe that the same was ever known or used prior to his invention thereof.

JOHN HOLLAND.

Sworn to and subscribed before me this 15th day of March, 1882.

[L. S.] GEO. J. MURRAY,
Notary Public, Hamilton County, State of Ohio.

[Endorsed:] 55730. $\frac{77}{244}$. (U. S. Patent Office. Mar. 18, 1882.)

---

* Words and sentences enclosed in brackets erased in original.

69 Copied.

Lead-Holder for Pencils. #55730. *Filed March 18th*, 1882.

Room No. 25.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *April 6th*, 1882.

John Holland, care Geo. J. Murray, Cincinnati, Ohio:

This case has been examined. The claim is substantially anticipated in #33034, Faber, August 13th, 1861 (pencil and crayon holder), or in view of the fact that it is common to serrate or screw thread the inside surface of clamping jaws. See #96597, Kemmis, Nov. 9th, 1869, and #248,520, Somers, Oct. 18th, 1881 (both in class of pencil and crayon holders).

The application is therefore rejected. A power of attorney to Charles A. Neale, as associate —, has been received, but owing to the fact that it has no signature it cannot be recognized.

L. M. E. COOKE, *Exam'r.*

W. H. M.

[Endorsed:] 1. 55730. $\frac{77}{244}$. J. Holland. April 6, 1882. Rej'd.

70 To the Commissioner of Patents.

DEAR SIR: In the matter of the application of John Holland for patent for lead-holder for pencils, filed March 28th, 1882, No. 55730, I hereby appoint Charles A. Neale, of Washington, D. C., as my associate attorney.

GEO. J. MURRAY.

[Endorsed:] 25. United States Patent Office. April 12, 1882.

71 *Application of John Holland. Lead-Holder for Pencils. No.* 55730. *Filed M'ch 18th*, 1882.

Before the examiner. Room 25.

Hon. Com. of Patents.

SIR: In the case above mentioned I submit the following amendment:

After the word "lead," line 17, p. 1, insert the words "near its point end."

Before the preamble of the claims insert the following:

["I am aware that its is old to provide a pencil-case for holding an ordinary lead pencil with an interior sliding tube slit at the end to form fingers, the holding surfaces of which are serrated, the shanks of the fingers being so bent as to form inclines, upon which a ring clamp is moved to open or close the fingers."]*

A. Substitute 1, Dec. 5, '83.

---

* Words and sentences enclosed in brackets erased in original.

Erase the claim and substitute the following:

Erase and insert amend't C, filed Oct. 13, 1883.

["The combination, substantially as before set forth, of the pencil-case, the lead tube A rigidly secured thereto, having its lower end internally threaded and longi-
72 tudinally slotted, and the clamping sleeve constructed to form the point end of the case and to be adjusted on the lead tube to press the threaded fingers upon the lead."]*

The patents to Faber and Cleveland cited are acknowledged in paragraph —, on lines 14 to 30, p. 1.

Somers does not show a lead tube internally threaded and provided at the point end with longitudinal slits. He shows an entirely different character of pencil, in which the lead is held by independent gripping jaws.

The patent to Kemmis has been fully acknowledged in this amendment, and it is thought that, in view of the decided improvement which applicant's construction exhibits over pencils of the same class as heretofore made, applicant is entitled to protection in the manufacture of pencils having his improvement, and the claims should be allowed. The claim is drawn for a combination which is not shown in any one of the references cited.

Respectfully,
JOHN HOLLAND,
By his attorney, C. A. NEALE.

Washington, D. C., May 16, 1882.

[Endorsed :] 2. 55730. $\frac{77}{244}$. J. Holland. May 16, 1882. Amendment A B. 25. (U. S. Patent Office, May 16, 1882.)

73 Copied.

Lead-Holder for Pencils. # 55730. *Filed March* 18*th*, 1882.

Room No. 25.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *June* 15*th*, 1882.

John Holland, care Chas. A. Neale, asso. —, Washington, D. C.:

The amend- claim presents nothing patentable over the references heretofore cited, particularly over Cleveland and Kemmis, there being no invention in serrating Cleveland's clamping fingers as shown in the patent to Kemmis.

The application is therefore finally rejected.

L. M. E. COOKE, *Exam.*

W. H. M.

[Endorsed] 3. 55730. $\frac{77}{244}$. J. Holland. June 15th, 1882. Rej'd.

---

* Words and sentences enclosed in brackets erased in original.

74 *Application of John Holland. Lead-Holders for Pencils. No.* 55730. *Filed M'ch* 18, 1882.

Before the Examiner. Room —.

Hon. Com. of Patents.

Sir: In asking a reconsideration of the above-mentioned case applicant would call the attention of the examiner to the fact that his claim could not be so construed as to cover any one of the references or any two or more of them combined. None of the references show an interiorly-threaded and longitudinally-slotted lead tube. Kenmis describes "a series of spring clamps," having their outwardly-jutting ends serrated to hold the end of a common pencil.

But with his form of clamps he could not hold a lead. No reference has been cited showing an interiorly-threaded lead tube.

Applicant's specification particularly states this invention. It is intended as an improvement of such construction as shown by Cleveland and Faber, thus acknowledging the state of the art as illustrated in their patents *all* all those which have similarly constructed lead tubes as clamps.

Applicant's device is new and useful within the intent of the statute, and the claim should be allowed.

Washington, D. C., May 17, 1883.

JOHN HOLLAND,
By his attorney, C. A. NEALE.

[Endorsed:] No. 4. 55730. Letter to office. Filed May 17, 1883. (Patent Office U. S., May 17, 1883.)

75 *Crayon Holder.* # 55730. *Filed Mar.* 18, 1882.

Room No. 96. C.

Department of the Interior,
United States Patent Office,
Washington, D. C., *June* 13, 1883.

John Holland, c.o. Chas. A. Neale, present:

Patents Nos. 23487, Peirce, April 6, 1859, pencil & crayon holders, and 154,345, Saunders, Aug. 25th, 1874, lathe chucks, are cited in addition to the references of record in the rejection of the claim. The patent to Saunders shows it to be old. To internally screw thread the clamping jaws and to apply this construction to the clamping jaws of a pencil-holder does not exhibit invention.

WM. H. BLODGETT, *Ex'r.*

C. F. BROWN, *Ass't.*

[Endorsed:] No. 5. 55730. Rejected June 13th, 1883.

76 *Application of John Holland. Lead-Holders for Pencils.* 55730. *Filed M'ch* 18, 1882.

Before the examiner. Room 96.

Hon. Com. of Patents.

SIR: In the case above mentioned I submit the following amendment:

[Written on side in lead pencil:] Rej. f'r reas. before stated.

Erase the claim and substitute the following:

["1st. As a new article of manufacture a lead tube for pencils, consisting substantially, as before set forth, of a tube provided at one end with internal or female threads and longitudinal slots to form threaded fingers."

Substitute 2. Dec. 5, '83. C.

"2nd. The combination, substantially as before set forth, of the lead tube internally threaded and longitudinally slotted at one end, and a clamping sleeve adapted to be adjusted on the slotted end of said tube to press the threaded fingers on the lead."]*

Insert amend't D, filed Oct. 24, 1883.

The examiner is requested to take final action on this case in order that an appeal may be taken.

Washington, D. C., Oct. 13th, 1883.

JOHN HOLLAND,
By his attorney, C. A. NEAL.

[Endorsed:] No. 6. 55730. Amendment C. Filed October 13, 1883. Cancelled. (Patent Office U. S., Oct. 13, 1883.)

77 *Lead-Holder.* # 55730. *Filed Mar.* 18, 1882.

Room No. 96. C.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *October* 17*th*, 1883.

John Holland, c. o. Chas. A. Neale, present.

This case has been carefully reconsidered. The claims are held to be anticipated by the references before cited, and they are, therefore, again rejected.

WM. H. BLODGETT, *Ex.*

(C. F. B.)

[Endorsed:] No. 7. 55730. Rejected October 17, 1883.

---

* Words and sentences enclosed in brackets erased in original.

78 *Application of John Holland. Lead-Holder for Pencils.* 55730.
Filed M'ch 18, 1882.

Before the examiner. Room 96.

Hon. Com. of Patents.

SIR: In the above-mentioned case I further amend by inserting the following additional claim preparatory to appeal:

["3rd. The combination, substantially as before set forth, of the pencil case, the lead tube A secured therein, having its lower end internally threaded and longitudinally slotted, and the clamping sleeve constructed to form the point end of the case and to be adjusted on the lead tube to press the threaded fingers upon the lead."]*

Erased Dec. 5th, '83. D.

Washington, D. C., Oct. 24th, 1883.

JOHN HOLLAND,
By his attorney, C. A. NEALE.

[Endorsed:] 55730. No. 8. Amendment D. Filed October 24, 1883. Cancelled. (U. S. Patent Office. Oct. 24, 1883.)

79 *Pencils.* # 55730. *M'ch 18th,* '82.

Room No. 95.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Nov. 6th,* 1883.

John Holland, care Charles A. Neale, present:

This application, included in the class of station*ary*, has been transferred to division 10, room 95.

Applicant may, by his attorney, consult with the examiner in charge personally relat*ed* to the above.

J. C. CHAPMAN, *Ex'r.*

[Endorsed:] 55730. $\frac{1870}{132}$. J. Holland. 2. Nov. 6, '83. (9.)

80 *Application of John Holland. Lead-Holder for Pencils.* 55730.
Filed M'ch 18th, 1882.

Before the examiner. Room 95.

Hon. Com. of Patents.

SIR: In the case above mentioned I submit the following amendment:

Erase claim A of amendment filed May 16th, 1882, and substitute the following:

"I am aware that it is old to provid- a pencil-case for holding ordinary lead pencils with a sliding ring to which are

---

* Words and sentences enclosed in brackets erased in original.

1 secured spring clamps having their holding surfaces serrated
and having their shanks bent to approach each other, then
jut outwardly and downwardly at their free ends so that a
ring slide may be moved *moved* upon said shanks to cause
the free ends of the clamps to grasp or release a pencil, and I
am also aware that it is old to provide the lead-holding tube
of a pencil with an interior thread and a single slot. I there-
81 fore do not claim either of these devices."

Erase the claims and substitute the following:

"1st. As a new article of manufacture, a lead tube for pen-
cils, consisting substantially, as before set forth, of a tube pro-
2 vided at one end with internal or female threads and two or
more longitudinal slots to form threaded fingers.

"2nd. The combination with the lead tube, provided at one end with internal threads and two or more longitudinal slots, of a clamping sleeve adapted to be adjusted upon the slotted end of the tube to press the threaded fingers upon a lead, substantially as described."

[3rd. The combination, substantially as before set forth, of the
pencil-case, the lead tube secured therein
Erased by amend't and provided at its lower end with internal
Dec. 28, '83. 2. threads and longitudinal slots, and the
clamping sleeve constructed to form the
82 point end of the pencil-case and to be adjusted upon the lead
tube to press the threaded fingers upon the lead.]*

Remarks.

Aside from the well-known "automatic pencil" and a lathe chuck two classes of references have been cited against this application. The first class comprises pencils having a long tubular holder, terminating at the point in grasping fingers, upon which is fitted a tapering clamping sleeve, which may be adjusted to cause the fingers to release or grasp a lead and prevent it from slipping in either direction—see Faber and Cleveland—and the second class comprising pencils having a holder to prevent the lead (or pencil) from slipping outward and a shoulder or stop to prevent the lead from slipping inward. See Pierce and Kemmis.

The device claimed in this application belongs to pencils of the first class.

As stated in the remarks accompanying the amendment of May
16th, 1882, the state of the art as illustrated in the patents to Faber
and Cleveland is fully acknowledged in the specification as
83 originally filed. See paragraph —, on lines 14 to 30, p. 1.

In the construction shown in these references last named the extreme ends of the clamping fingers are bent inward slightly, so that when the clamping sleeve is tightened up the lead is grasped at a single point by sharp edges. This tends to cut and weaken the lead so that it breaks on slight pressure, and this fault is just what applicant has overcome by his present invention.

---

* Words and sentences enclosed in brackets erased in original.

The patent to Somers has no bearing on the claims, as his pencil is of an entirely different character. He does not hold the lead by means of a lead tube terminating in fingers which are pressed upon the lead by a clamping sleeve, but by means of "toggle jaws," which are pivoted outside the lead tube proper and protrude through opening therein.

The Saunders lathe chuck shows two pivoted jaws interiorly
threaded, and it is not regarded as worthy of notice here. It is pre-
sumed that the examiner formerly in charge of this case
84 cited this reference merely to show that holding surfaces have
heretofore been provided with female threads, and this fact
has not at any time been disputed by applicant.

The patent by Pierce shows not a lead tube but a lead holder, having internal threads and a single longitudinal slip upon one side to give said threads cutting points so that the edge of the slip may act as a thread cutter to the lead in screwing the latter into the holder. The lead is prevented from slipping inward during the operation of writing by a positive stop and not by the grip of the lead-holder. This patent does not need applicant's 1st claim, which is limited to a lead tube provided with internal threads and two or more longitudinal slots to form threaded grasping fingers.

The 2d and 3d claims embody combinations which do not appear in this patent to Pierce, to wit, a lead tube having threaded fingers and a clamping sleeve adapted to be adjusted on the fingers to press the latter upon a lead.

Kemmis shows three spring clamps secured to a sliding
85 ring and a ring clamp adapted to slide on the shanks of the
spring clamps to cause them to grasp or release the end of a
common pencil. The shanks of these spring clamps approach each other toward their free ends to afford an inclined surface for the ring clamp to move upon and are then bent sharply outward to form shoulders, which prevent the ring from getting out of place; then downward to form the grasping surfaces, which are roughened or serrated. There is no lead tube shown, and the construction of the spring clamps is such that the device could not be made to receive and hold a lead, as applicant's does.

It is submitted that no one of the references meets the claims in terms or effect, and, even though the examiner should be able to find a reference to anticipate the 1st claim here presented, the 2d and 3d claims are undoubtedly patentable.

The service claimed by applicant grips the lead just above the
writing point, as in the Faber and Cleveland devices, and holds it
steady, unlike the Faber and Cleveland devices. The lead is held
in a long threaded bearing and not at a single point; conse-
86 quently sufficient pressure may be applied to the lead to
hold it from slipping without in any way weakening or in-
juring it.

The claims are presented for favorable consideration.

Washington, D. C., Dec. 4th, 1883.

JOHN HOLLAND,
By his attorney, C. A. NEALE.

[Endorsed:] 55730. 1870. 132. J. Holland. Amend't 1–2. Dec. 5th, '83. (Patent Office U. S., Dec. 5th, 1883.) 10.

---

87 # 55730. *M'ch 18th*, '82.

Room No. 95.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Dec. 6th*, 1883.

John Holland, care Charles A. Neale, present:

Before further consideration of this matter in connection with amendment of the 5th inst., applicant is advised that the 3d cause of claim is at least superfluous and should be cancelled.

The novelty, which is quite limited, is fully covered by the 1st and 2d claims. The only difference, in view of references, consists of the internal threaded fingers, which have been before provided with the threads omitted.

J. P. CHAPMAN, *Ex'r.*

[Endorsed:] 55730. 1870. 132. J. Holland. Dec. 6, 1883. (11.)

---

88 *Application of John Holland. Lead-Holder for Pencils.* 55730. *Filed M'ch 18th*, 1882.

Before the examiner. Room 95.

Hon. Com. of Patents.

SIR: I hereby amend the above application by erasing the 3d claim.

Washington, D. C., Dec. 28, 1883.

JOHN HOLLAND,
By his attorney, C. A. NEALE.

[Endorsed:] 55730. $\genfrac{}{}{0pt}{}{1870}{132}$. J. Holland. Amend't, Dec. 28, '83. (Patent Office U. S). Dec. 28, 1883. 95.

---

89 Serial No. 55730.

ISSUE DIVISION, DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
WASHINGTON, D. C., *Dec. 31st*, 1883.

John Holland, c. o. Chas. A. Neale, asso., city.

SIR: Your application for an improvement in lead-holder for pencils, filed Mar. 18th, 1882, has been examined and allowed.

The final fee, twenty dollars, must be paid, and the letters patent bear date as of a day not later than six months from the time of this present notice of allowance.

If the final fee is not paid within that period the patent will be withheld, and your only relief will be by a renewal of the application, with additional fees, under the provisions of section 4897, Revised Statutes. The office aims to deliver patents upon the day of their date and on which their term begins to run, but to do this properly applicants will be expected to pay their final fees at least twenty days prior to the conclusion of the six months allowed them
by law. The printing, photo-lithographing, and engrossing
90 of the several patent parts, preparatory to final signing and
sealing, will consume the intervening time, and such work will not be done until after payment of the necessary fees.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor and title of invention, as above given, date of allowance (which is the date of this circular), date of filing, and, if assigned, the names of the assignees. If you desire to have the patent issue to assignees an assignment containing a request to that effect, together with the fee for recording the same, must be filed in this office on or before the date of payment of final fee.

Additional copies of specifications and drawings will be charged for at the following rates: Single copies, uncertified, 25 cents; twenty copies or more, 10 cents each. The money should accompany the order.

Very respectfully, BENJ. BUTTERWORTH,
Commissioner of Patents.

[Written across face in red ink:] ☞ In remitting final fee give the serial number at the head of this notice.

[Written on margin in red ink:] The within title is that given by the examiner in charge as most appropriate to your invention. Should you desire a change in the same satisfactory reasons must be given therefor on or before the payment of the final fee.

91 *Memorandum of Fee Paid at U. S. Patent Office.*

[Written in pencil:] $20. M.

Serial No. 55730. 1882.

Inventor, John Holland.
Patent to be issued to inventor.
Name of invention as allowed, lead-holder for pencils.
Date of payment, Jan. 3, 1884.
Fee, $20.00.
Solicitor, C. A. Neale.
Date of circular of allowance, Dec. 31, 1883.
Send patent to Geo. J. Murray, Cincinnati, Ohio.

[Endorsed:] Patent Office U. S., Jan. 3, 1884.

92 Serial No. 55730. Ex'r Book No. —

1882.

1870/132

Patent No. 292,313.
John Holland, of Cincinnati, county of Hamilton, State of Ohio.

Invention, lead-holders for pencils.

Parts of application filed.
Petition, March 18, 1882.
Affidavit, "
Specification, "
Drawing, "
Model not required.
Specimen.
First fee, cash, $15, March 18, 1882.
" cert.

App. filed complete March 18, 1882.
Examined Dec. 29, '83. Chapman, ex'r.
Countersigned Dec. 31, '83. J. W. Babson, for Commissioner.
Notice of allowance Dec. 31st, 1883.
Final fee, cash, $20, Jan'y 3, 1884.
3. " cert., —— —, 188–.
Patented Jan. 22d, 1884.
City or P. O. address, Geo. J. Murray, Cinn., Ohio. Chas. A. Neale, asso. —, present.

93 1882. G.

Contents.

Application papers.
1. April 6, 1882.—Rej.
2. May 16, 1882.—Amendment A B.
3. June 15, 1882.—Rej. 2d.
4. May 17, 1883.—Letter to office.
5. June 13, 1883.—Rej.
6. Oct. 13, 1883.—Amend't C.
7. October 17, 1883.—Rej.
8. October 24, 1883.—Amend't D.
9. 2. Nov. 6, '83.
10. Amend't 1–2, Dec. 5, '83.
11. 1. " 6, '4.
12. Amend't, Dec. 28, '83.
13.
14.
15.
16.
17.
18.
19.
20.

Title, improvement in lead-holders for pencils.
120 stationary pen & pencil cases.
Ex'd: C. F.
E. L. L.

(Here follows diagram marked p. 94.)

[Endorsed:] 14742. D. 1 ex.

(No Model.)

J. HOLLAND.

LEAD HOLDER FOR PENCILS.

No. 292,313. Patented Jan. 22, 1884.

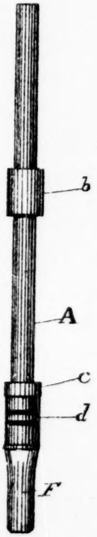


Fig. 1

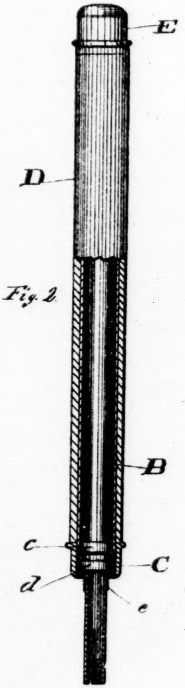


Fig. 2

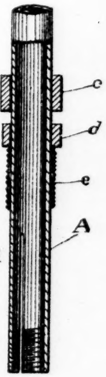


Fig. 3

No. 249.
Holland
v
Shipley et al.
} p. 94

ATTEST

Horatio V. Croll

M. W. Oliver

INVENTOR

John Holland

By Geo. J. Murray

Atty.

95

UNITED STATES PATENT OFFICE.

JOHN HOLLAND, of Cincinnati, Ohio.

Lead-Holder for Pencils.

Specification forming part of Letters Patent No. 292,313, dated January 22, 1884. Application filed March 18, 1882. (No model.)

To all whom it may concern:

Be it known that I, John Holland, of Cincinnati, county of Hamilton, State of Ohio, have invented certain new and useful improvements in lead-holders for pencils, of which the following is a specification:

The object of my present invention is to hold the lead or crayon in pencils from slipping back within the tube when pressed upon by the act of writing, without danger of breaking the lead.

Lead-tubes now in common use are usually slotted at the lower end to form elastic clamping-fingers, which fingers are closed upon the lead near its point end by a sleeve or tube which moves longitudinally over the fingers. These fingers are either smooth upon the inside, or terminate at their ends in sharp inward projections or claws. The first kind soon become so smooth that the lead slips back when borne upon in the act of writing, and the second frequently breaks the lead when the clamping-sleeve is tightened up, and when tightened up carefully the lead often breaks in use, when writing with the pencil inclined. I overcome both of these objections by making a fine screw-thread within the lower end of the tube before it is slotted to form the clamping-fingers.

In the accompanying drawings, figure 1 is an elevation of the lead-tube, detached from the case, and having the clamping-sleeve in position. Fig. 2 is a central vertical section of the lower part of the case and the lower end of the slotted lead-tube. The upper portion of the case and the lead-tube are shown in elevation. Fig. 3 is a longitudinal central section of the lower part of the lead-tube, greatly enlarged. In this view, as in Fig. 2, the clamping-sleeve is removed.

The lead-tube A is provided with three collars, *b*, *c*, and *d*.

To the collars *c* and *b* is secured a tube, B, and upon this is secured the outer finish of the case, as follows: The perforated lower cap, C, is soldered or otherwise suitably secured upon the lower end of said tube B. The outer shell, D, is slipped over the tube B until it strikes the lower cap, leaving the upper end of said tube B exposed to receive the cap E, which is slipped down against the upper end of tube D, and suitably secured. The lower end of lead-tube A is internally tapped with a fine screw-thread, after which the tube is slotted up, dividing the lower end into three elastic fingers. Above the slots in the tube is a small screw-threaded tube, *e*, to receive the internal screw in the upper end of the clamping-sleeve, F, which is screwed over the lower end of tube A until stopped against the collar *d*.

The clamping-fingers may, instead of being screw-threaded upon the inside, be serrated or roughened to accomplish the same result; but the screw-thread is much better, because by this means a uniformly-even roughened surface can be made within the lower end of the tube at comparatively small expense; and, as these pencils are designed to take the place of the common lead pencil, they must be made cheaply to insure their introduction into general use.

I am aware that it is old to provide a pencil-case for holding ordinary lead pencils with a sliding ring, to which are secured spring-clamps having their holding-surfaces serrated, and having their shanks bent to approach each other, then jut outwardly and downwardly at their free ends, so that a ring-slide may be moved upon said shanks to cause the free ends of the clamps to grasp or release a pencil; and I am also aware that it is old to provide the lead-holding tube of a pencil with an interior thread and a single slot. I therefore do not claim either of these devices.

I claim as my invention—

1. As a new article of manufacture, a lead-tube for pencils consisting, substantially as before set forth, of a tube provided at one end with internal or female threads and two or more longitudinal slots to form threaded fingers.

2. The combination, with the lead-tube provided at one end with internal threads and two or more longitudinal slots, of a clamping-sleeve adapted to be adjusted upon the slotted end of the tube to press the threaded fingers upon a lead, substantially as described.

JOHN HOLLAND.

Witnesses:
M. W. OLIVER.
GEO. J. MURRAY.

96 And afterward, to wit, but on the same day and year as last aforesaid, the said defendants herein aforesaid, by their said solicitors aforesaid, filed in the clerk's office of the court aforesaid in this cause the patent drawings and specifications referred to in the aforesaid order of said — so as aforesaid heretofore made *made* herein, and which said patent drawings and specifications so as aforesaid filed are in words and figures and drawings as follows, to wit:

(Here follows diagram marked p. 97.)

98 *Faber's Patent.*

JOHANN L. FABER, of Stein, Bavaria.

Letters Patent No. 2030, dated Aug. 13, 1861; whole No. 33034. The schedule referred to in these Letters Patent and making part of the same.

To all whom it may concern:

Be it know- that I, Johann Lothar Faber, of the firm of A. W. Faber, in Stein, near Nuremberg, Bavaria, have invented a new and useful improvement in pencils; and I do hereby declare that the fol-

J. L. Faber,
Pencil.

No. 2030.
33.034

Patented. Aug 13. 1861.

Fig. 1.

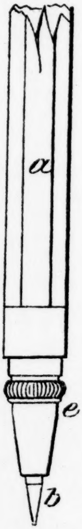


Fig. 2.

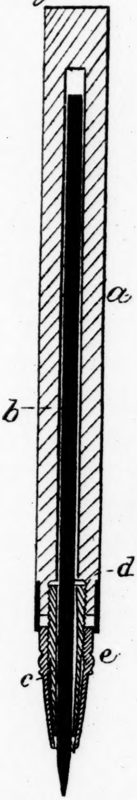
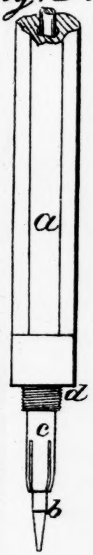


Fig. 3.



No. 249.
Holland
v.
Shepherdal
} p. 97

Witnesses
Ch. Fürtsch
A. Wagler

John Lothar Faber.

lowing is a full, clear, and exact description thereof, reference being had to the accompanying drawings, making part of this specification, in which—

Fig. 1 is an outside view of the pencil-holder.

Fig. 2, a longitudinal section, and

Fig. 3, another outside view with the clamping nut removed.

The same letters indicated like parts in all the figures.

In my invention the plumbago or lead or other marking material is made in a long cylindrical rod like a wire, which I term the pencil, and which is received in the bore of a handle closed at the butt end and provided at the open end with a split tube, the bore
99 of which is such as to receive the pencil freely and threaded
at the rear end to receive a cap nut, the bore of which, beyond the threaded portion, is slightly tapering to compress the split end of the tube and make it grip and hold the pencil. In the accompanying drawing, *a* represents the handle, which I prefer to make of wood and of any of the usual forms of common pencils. This is bored nearly through its whole length to receive freely the pencil *b*, whether of plumbago or other marking material, and made of a cylindrical form. To the open end of this handle is secured a metal tube, *c*, the rear portion, *d*, of which is made of greater diameter than the part *e*, and threaded. The part *c* is slightly tapering or rounding on the outside of the extreme end, and for about one-half the length from the extreme end it is split into four (more or less) sections, to form what is known as a clamping tube. To the outside of this tube is fitted a cap, *e*, the rear end of which is a threaded nut to fit the threaded portion *d* of the clamp tube *c*, and beyond the nut the bore is tapering to compress the split portion of the tube C to make it gripe and hold the pencil along any portion of its length. The pencil is to be pointed, as represented, with a file or any other suitable instrument inserted through the split tube into the handle, and the cap secured on the cap causing the split
100 portions of the tube to gripe the cylindrical portion of the
pencil without the danger of breaking it, and so the point wears. By simply unscrewing the cap to loosen the gripe the pencil can be advanced and regriped, and the advancing can be effected either by elevating the closed end of the handle, that the pencil may descend by gravity, or the pencil can be drawn out to the required distance by taking hold of the end, and when the pencil is not required to be used, by slightly unscrewing the cap and holding the handle with the butt end down, the pencil will drop in the handle, and by screwing down the cap the split portion of the tube is so much closed as to confine the pencil point and all within the handle, so that it can be carried with safety to the pencil.

By this means I avoid all the inconvenience of the common pencils, such as gradually cutting away and shortening the handles, breaking the lead by cutting away the wood around the lead, also the waste of lead; and I also avoid many of the inconveniences due to the ever pointed pencil crushing or weakening the lead by the action of the follower to force it forward through the tube, and the difficulty of obtaining leads to fit the tube so accurately as not to drop out and yet admit of forcing it through the tube.

101 What I claim as my invention, and desire to secure by letters patent, is the pencil handle with the bore adapted to receive and hold the cylindrical pencil, substantially as described, in combination with the split tube and screw-clamping cap, substantially as and for the purpose specified.

JOHANN LOTHAR FABER,
Of the Firm of A. M. Faber.

Witnesses:
D. GEISSE.
T. PUR.

(Here follows diagram marked p. 102.)

103 UNITED STATES PATENT OFFICE.

ORESTES CLEVELAND, of Jersey City, New Jersey.

Improvement in Pencils with Movable Leads.

Specification forming part of Letters Patent No. 184,035, dated November 7, 1876. Application filed April 8, 1876.

To all whom it may concern:

Be it known that I, Orestes Cleveland, of Jersey City, county of Hudson, and State of New Jersey, have invented certain new and useful improvements in pencils with movable leads; and I do hereby declare the following to be a full, clear, and exact description of the same, reference being had to the accompanying drawing, forming a part of this specification, in which—

Figure 1 represents an enlarged longitudinal sectional view of a pencil containing my invention. Fig. 2 is a transverse section of the same on line x x. Fig. 3 is an enlarged sectional view, showing a modification of the same.

The object of my invention is to produce a pencil in which long movable leads are used, which shall be so constructed as to be capable of receiving a number of such leads in addition to the one in use, and cheaply manufactured; and it consists in the device hereinafter fully described and claimed.

A is a tube, of suitable diameter and length, securely attached at one end to a collar, B, by screwing, soldering, or any other common and well-known method. G is a cap, which fits over the other end of the tube A, and is held securely thereon by means of a screw, spring, or other device, which readily permits of its removal. Another tube, E, smaller in diameter than the tube A, placed within the tube A, is also secured to the collar B, either rigidly or removably, in any common and well-known manner. This tube may be shorter than the tube A, if desired. The internal diameter of the tube E is such as to form a receptacle for and easily permit the lead of any given size to freely move therein, while its external diameter is such that there is a space between its periphery and the internal

102

O. CLEVELAND.

PENCILS WITH MOVABLE LEADS.

No. 184,035. Patented Nov. 7, 1876.

Fig. 1.

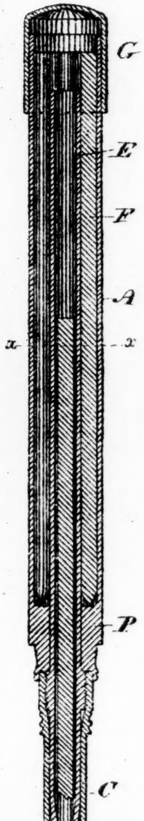


Fig. 2

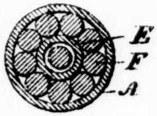
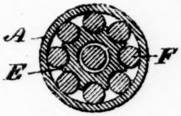


Fig. 3



No 249.
Holland v. Shipley et al. } p. 102

WITNESSES

C. H. Ridenour

G W Laraway

INVENTOR

Orestes Cleveland,
by Munson & Philipp
his Attorneys.

A. 4.

surface of the tube A large enough to form a reservoir for receiving one or more long leads, F, similar to those used with the pencil, the ends of which rest against the collar B when the pencil is in the position shown in Fig. 1.

Any means may be employed for holding and feeding the lead as it is worn away by use. In the drawing I have shown for this purpose a sleeve, D, secured at one end to the collar B, the other end for some distance being split. The outer end of this sleeve is slightly conical in form, and is contracted, to grasp the lead, by means of a sleeve, C, which screws upon the former, the resiliency of the split portions of the sleeve D causing them to expand when the sleeve C is unscrewed, and thus permit the lead to be drawn out by the hand.

The inner tube E may be fluted, as shown in Fig. 3, so as to separate the leads from one another, or partitions may extend from the inner to the outer tube, so as to form cages or cells, each just large enough to contain the lead of the desired size.

The diameter of the inner and outer tubes may be increased or diminished, to adapt them to the size of lead which is to be used.

Instead of the cap G, the tube A may be made solid at that end, and be screwed or otherwise fastened upon the collar B, although I prefer to use the cap.

The construction of the device so that the inner and outer tubes are held in the relative positions described may be varied without departing from my invention, as any construction that provides a receptacle for the long lead in use, and a reservoir around said receptacle for similar leads ready to be used, said receptacle and reservoir being independent of, and entirely out of the way of, the devices that hold and feed the lead in use, comes within the scope of my invention.

The advantages possessed by my device are, it can be cheaply manufactured, has no complex mechanism to get out of order, and affords a receptacle for the lead in use, and a reservoir for the leads to be used independent of the portion which holds and feeds the lead in use.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1. A pencil having an inner tube, forming a receptacle for the lead in use, and an outer tube, forming, with the inner tube, a reservoir for one or more similar leads, substantially as described.

2. The combination of an inner tube, forming a receptacle for the
lead in use, an outer tube, forming, with the inner tube, a
103½ reservoir for one or more similar leads, with means, substantially as described, for holding the lead in use, as specified.

3. The combination of an inner tube, forming a receptacle for the lead in use, an outer tube, forming, with the inner tube, a reservoir for one or more similar leads, and a cap, G, substantially as shown and described.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

ORESTES CLEVELAND.

Witnesses:
HENRY T. MUNSON.
C. H. RIDENOUR.

(Here follows diagram marked p. 104.)

105 UNITED STATES PATENT OFFICE.

J. A. KEMMIS, of New Orleans, Louisiana.

Letters Patent No. 96597, dated November 9, 1869.

Improvement in Pencil-Cases.

The schedule referred to in these Letters Patent and making part of the same.

To all whom it may concern:

Be it known that I, J. A. Kemmis, of New Orleans, in the parish of Orleans, and State of Louisiana, have invented a new and improved pencil and rubber holder; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawing, forming part of this specification.

This invention relates to improvements in cases for holding pencils and rubbers, designed to provide a convenient article for carrying in the pocket and for use.

It consists in an arrangement of sliding spring pencil-holder, and spring rubber-holder, within a tubular case, all as hereinafter more fully specified.

Figure 1 represents an elevation of my improved device, partly in section, and

Figure 2 represents a cross-section of the same.

Similar letters of reference indicate corresponding parts.

A represents an ordinary tubular metallic pencil-case, having a screwed cap, B, at one end.

C represents a series of spring-clamps, connected at their inner ends to a sliding ring, D.

Near the outer ends these clamping-springs jut outwardly, so that when the said ends bear against the inner surface of the case the shanks above the said jutting parts will pass through a ring, E, without contracting the space between the said ends.

The inner faces to these jutting ends are serrated, and the end of a common pencil, H, is inserted between them. The ring E is then moved back over the gradually-expanding shanks of the springs, and the serrated ends thereby clamped down tightly upon the end of the pencil.

The pencil may be moved into and out of the case by sliding the ring D, as required.

For securing the rubber in the other end, I provide two spring-hooks, connected to the case, within the end, a short distance therefrom, and projecting slightly.

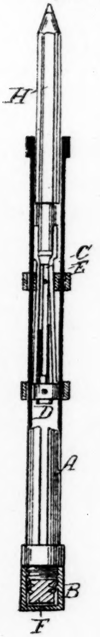
104

J. A. Kemmis,

Pencil Case.

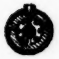
No. 96,591. Patented Nov. 9. 1869.

Fig. 1.



No. 249.
Holland
v.
Shipley et al.
} p. 104

Fig. 2.



Witnesses:

C. Hinchman
Jno. H. Brooks

Inventor:

J. A. Kemmis
Per Munn & Co
Attorneys.

(No Model.)

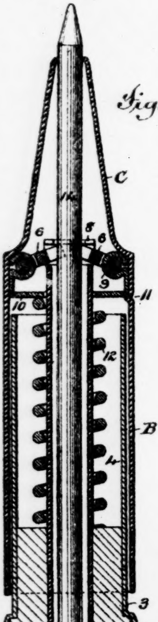
106

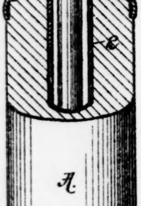
D. M. SOMERS.

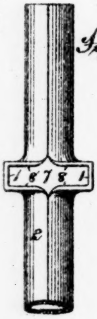
AUTOMATIC PENCIL CASE.

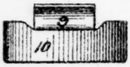
No. 248,520. Patented Oct. 18, 1881.

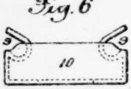
No. 249.
Holland
"
Stepley
et al
p. 106

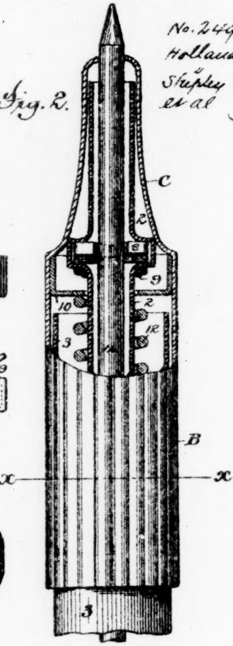


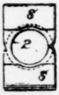


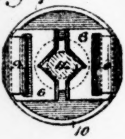


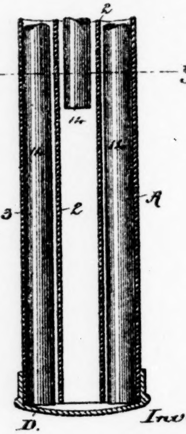


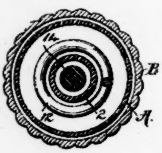


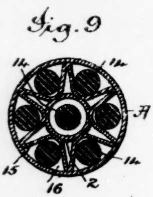












Attest,
Geo. H. Graham
T. H. Palmer

Inventor,
D. M. Somers,
by Munson & Philipp
Attys

The rubber G is inserted between the hooks, and withdrawn therefrom, when required, by compressing it, so as to pass it either into the space between the hooks or out thereof.

Having thus described my invention, I claim as new, and desire to secure by letters patent—

The improved pencil and rubber holder, having the spring-clamping holders C, rings E D, spring-hooks F, and screw-cap B, all arranged substantially as herein specified.

J. A. KEMMIS.

Witnesses:
G. W. LYMAN.
J. F. GILBERT.

(Here follows diagram marked p. 106.)

107 UNITED STATES PATENT OFFICE.

DANIEL M. SOMERS, of Brooklyn, assignor to JOSEPH RECKENDORFER of New York, N. Y.

Automatic Pencil-Case.

Specification forming part of Letters Patent No. 248,520, dated October 18, 1881. Application filed October 16, 1880. (No model.)

To all whom it may concern:

Be it known that I, Daniel M. Somers, a citizen of the United States, residing in the city of Brooklyn, county of Kings, and State of New York, have invented certain new and useful improvements in automatic pencil-cases, fully described and represented in the following specification and the accompanying drawings, forming a part of the same.

In said drawings, Figure 1 represents, by a longitudinal elevation, partially in section, one embodiment of my invention. Fig. 2 represents, by a similar view, a modification thereof. Fig. 3 is an elevation of one structure of the lead-holding tube. Fig. 4 is an end elevation of another form of said tube. Figs. 5 and 6 represent different side elevations of the ring carrying the bearings for the toggle-jaws and spring. Fig. 7 is an end elevation of said ring, with the toggle-jaws adjusted therein. Fig. 8 is a cross-sectional elevation on the line *x x* of Fig. 2, and Fig. 9 is a similar view taken on the line *y y* of the same figure.

For the purposes of more convenient illustration, the parts are shown in Figs. 1 and 4 as adjusted in the position in which the jaws release their gripe upon the lead.

The improvements effected by me are embodied in an automatic pencil-case in which a movable lead is controlled in its relation to the tip by holding jaws arranged so as to have a toggle-like action imparted to them by the movements of a carrier to which they are pivoted.

The instrument is given the dimensions and form of an ordinary pencil-case, thus having a long handle that terminates at one end in a tip contracted so that the movable lead that is carried in a lead-holding tube contained within the handle may, when protruded for use, form an extension of the tip that shall not be abrupt.

In carrying my invention into practical effect I connect the handle A and lead-holding tube 2 together, so that they are immovable with respect to each other. When this handle is made of wood, as is represented in Fig. 1, it is bored centrally to receive the lead-holding tube 2, and is preferably supplied with a ferrule, 3, fixed to and projecting from its forward end, to provide the chamber 4 and a bearing upon which slides the carrier B, the forward end of which is contracted to form the tip C; but this ferrule forms no essential part of the structure, as will hereinafter appear. The lead-holding tube 2 is preferably circular, but may be of any other shaped cross-section that provides an inner area that will freely receive and guide the lead, and to facilitate its construction it is desirable to form it as a split tube. At a proper point the body of this tube is swaged or upset to form bearing stop-guides, as 7, in which the inner or free ends of the toggle-jaws 6 play, said guides being open to admit the passage of the jaws within the lead-holding tube, and having parallel sides, as 1, to guide the jaws truly in their rocking movement, and having transverse walls 8, that act as stops limiting the rocking movement of said jaws, and thereby determining the reciprocating or sliding movement of the carrier B upon the handle A.

The toggle-jaws each have their outer or pivotal ends hung in sockets or bearings 9, that project from opposite sides of a ring, 10, that is perforated centrally, so that it may move over the lead-holding tube 2 without disturbing it, and which has a diameter adapting its exterior wall or circumference to fit snugly within the carrier B, so that its sockets, 9, may rest against the circular shoulder formed by contracting the said carrier to form the tip C, said ring 10 being secured in place by forcing in the body of the carrier to form teats, as 11, by rivets or in any other common manner. The base of this ring 10 forms a seat for the spiral spring 12, that is coiled about the lead-holding tube 2, whose opposite end is seated upon the end of the wooden portion of the handle A; or it may be upon a collar affixed to the said lead-holding tube 2, or to a ring or other projection fixed to the walls of the handle when formed of a tube, 3, as in Fig. 2. This lead-holding tube 2 may terminate at the point where it is perforated and swaged to form the bearing stop-guides 7, as in Figs. 1 and 4, or it may be continued beyond that point to extend its bearing-walls for the lead 14 it is to contain 107½ nearly or quite to the extremity of the walls forming the tip C, as in Figs. 2 and 3; and since the forward end of the tube 2 thus extended is made substantially parallel with the inner walls of the tip, so that said tip and its carrier will be guided thereby when the latter is reciprocated to operate the toggle-jaws, it will hence be obvious that the solid handle, Fig. 1, need not be provided with the ferrule 3, and thus that said handle, whether made solid, as in Fig. 1, or of tubular construction, as in Fig. 2, need extend into the carrier B only so far as is necessary to provide a bearing for one within the other.

In the modification, Figs. 2, 8, and 9, the exterior of the carrier B is corrugated, as is seen in Figs. 2 and 8, to form a superior grasping surface for the fingers when the pencil-case is in use; and it is to be understood that these corrugations may be parallel longitudinal flutings or any regular or irregular undulations or other uneven surface. The handle A in this form is made of a case or tube, 3, its length being sufficient to form a handle of proper dimensions; and in consequence of the interior space it provides I am enabled to introduce within it a star-shaped tube that provides a number of radial walls, 15, which divide the chamber between the lead-holding tube 2 and the inner surface of the tube 3, with a number of cells, 16, of a length sufficient to accommodate extra leads, 14, a number of which may thus be stored in said handle. This star-shaped tube also operates to unite the tubes 2 and 3 securely together, thus enabling said tube to be made very light, and yet form practically a rigid and strong handle. To afford access to these leads I provide the end of the handle A with a simple removable cap, D, which may be secured in place by a screw-thread or any other common means, so that when the lead in tube 2 is exhausted said tube may be replenished by removing the cap D, withdrawing a lead from one of the cells 16, and introducing it into the tube 2, either into its tip end or into its base end, which may be left open for that purpose.

Normally the spring 12, that is seated upon the handle or upon a collar on the tube 2, that is fast to the handle, or upon a ring projecting from the case 3, will press against the ring 10, and thus cause said ring to move outward, taking with it the carrier B, which will then slide upon the ferrule or case 3. This outward movement of the ring 10 and its carrier B causes the outer surfaces of the toggle-jaws 6 to abut against the inner faces of the outer transverse walls, 8, of the guides 7, formed as a part of the non-moving lead-holding tube 2, and thus to be rocked inward as the carrier B moves outward, and hence to be projected forward within the lead-holding tube 2, whereby, if said tube contains a lead, as 14, said lead will be seized upon opposite sides by the faces of said toggle-jaws (which faces should be V-shaped, so as to present four bearing-surfaces, but other shapes may be used effectually if the bearing faces be serrated or screw-threaded), and thus embraced and held in fixed relation to the tube 2, with a pressure regulated by the power of the spring 12, said lead then acting as a stop, limiting the rearward movement of the said jaws, while in the absence of such lead the rear surfaces of said arms will abut against the inner faces of the inner transverse walls, 8, which then act as stops limiting such movement. If, now, the carrier B is forcibly pressed rearward, it is manifest that the outer surfaces of the toggle-jaws 6 will be borne upon by said inner faces of the outer transverse walls, 8, and thus be vibrated outward within said tube 2, and thus open the space between their ends, so that the lead 14 is released from their grasp, which lead may then be adjusted to protrude, as may be desired, from the end of the tip C, or allowed to retire within the tube 2, where it may be stored for carriage when the pencil is out of use, the jaws 6 being then thrust forward by the spring and acting as a stop, so closing said tube 2 as to prevent the egress of said lead.

Of course, it will be apparent that three and even a greater number of toggle-jaws may be used without departing from my invention, and it may be remarked that when the lead is round or sextagonal three jaws will efficiently act, and when the lead is square two or four jaws may be used, and that in some cases the faces of jaws may be plain.

From the foregoing it will be seen that the handle part A, which carries the lead-holding tube, constitutes, in effect, a pressure-cap, by which the lead-holding tube may be moved lengthwise with respect to the carrier, or that portion of the case to which the toggle-jaws are pivoted, for the purpose of causing said jaws to release or grasp the lead as desired. This feature I do not claim, broadly, in pencil-cases or lead and crayon holders; nor do I claim the same when combined with a retracting-spring which automatically moves the parts in a direction to cause the jaws to close on the lead.

I also remark, in conclusion, that I do not claim, broadly, an automatic lead or crayon holder in which one or more grasping jaws inside of and connected with the sheath or handle are arranged to enter an opening in the lead-holding tube, so as to grasp the lead therein when the tube is retracted, and to be removed from the opening out of contact with the lead when the tube is moved forward.

What I do claim as my invention is—

1. A pencil case consisting of a handle and a lead-containing tube fixed to said handle, in combination with a sliding carrier which is spring-seated with respect to said handle and is movable lengthwise relatively thereto, and toggle-jaws which are pivoted to said carrier and enter openings in said lead-holding tube, all substantially as herein shown and described.

108 2. The combination, with the handle and tube 2, fixed thereto, of the carrier B, toggle-jaws 6, pivoted thereto, and spring 12, substantially as described.

3. The combination, with the handle and pivoted toggle-jaws, of a lead-carrying tube provided with guides 7 for said jaws, substantially as described.

4. The combination, with the tube or case 3 and the tip C, of a lead-carrying tube, 2, extending with said tip, and provided with a rigid end that acts as a guide for the latter in its sliding movement, substantially as described.

In testimony whereof I have hereunto set my hand in the presence of two subscribing witnesses.

DANIEL M. SOMERS.

Witnesses:
H. T. MUNSON,
T. H. PALMER.

(Here follows diagram marked p. 109.)

110 DANIEL A. PEIRCE, of East Greenwich, R. I.

Letters Patent No. 23487, dated Ap'l 5th '59.

The schedule referred to in these Letters Patent and making part of the same.

To all whom it may concern:

Be it known that I, Daniel A. Peirce, of East Greenwich, in the county of Kent and State of Rhode Island, have invented a new and useful improvement in lead pencils; and I do hereby declare that the following is a full and correct description thereof, reference being had to the accompanying drawings and to the letters of reference marked thereon, the same letters in the different figures denoting like parts.

Fig. 1 is an enlarged view of the pencil.

Fig. 2 shows a section of the same through the centre lengthwise.

Fig. 3 is a representation of the lead-holder or the part that moves the lead in and out.

To construct this pencil, first make the tube A, with a slot cut through one side nearly its whole length. Upon the lower end of this tube is placed the bulb B, the lower end of which encircles the upper end of the point C and is soldered, together with the
111 point, to the tube A. The tube D is placed on the tube A,
only leaving space enough between them to receive the spiral-shaped wire x x, which is soldered to the outside of the tube D, so as to form an inside screw, into which E fits so as to be obliged to traverse from one end of the slot to the other whenever the tube D is turned, as the slot prevents E from turning around with the tube D.

Inside of the tube A is placed another smaller tube, F, for the purpose of holding the lead G. This is more particularly the object of this improvement. In this pencil the point does not slide into a case so as to protect the lead when carried in the pocket, so it is made to draw back the lead for that purpose, and to accomplish this the end of the lead G is inserted into the tube F, in the end of which is a screw thread cut with a taper top, so that the whole is largest at the end, to facilitate the entrance of the lead; and one edge, o, of the junction of the tube is slightly depressed, so as to form a row of teeth on the inside to cut a screw thread upon the end of the lead as it is turned into the tube. This gives a very firm hold upon the lead in moving it back and forward and prevents the liability to become loose and broken when carried in the pocket.

J represents a handle, made of ivory, wood, or other suit-
112 able material, which is cemented to the tube D.

L is a ring soldered to the end of the tube A to keep the tube D on in place.

Of the operation or use of the improvement it will perhaps only be necessary to say a few words:

The pencil is held in the fingers of one hand by the bulb, and the handle J is turned by the other until the tube F projects beyond the point C, when by placing the end of the lead in the end of the tube, and turning it, it will be screwed in, and may be drawn into the point by a reverse motion of the handle.

Having thus described the pencil, what I claim as my improvement, and desire to secure by letters patent, is: I claim constructing the end of the tube F with a screw thread, and forming the row of teeth therein, in the manner substantially as described, and for the purposes herein set forth.

In testimony whereof I have hereunto set my hand.

DANIEL A. PEIRCE.

Witnesses:
SILAS WEAVER.
BENJ. ARNOLD.

(Here follows diagram marked p. 113.)

114

UNITED STATES PATENT OFFICE.

ANDREW SAUNDERS, of Yonkers, N. Y.

Improvement in Chucks for Holding Pipe-Nipples.

Specification forming part of Letters Patent No. 154,345, dated August 25, 1874. Application filed June 16, 1874.

To all whom it may concern:

Be it known that I, Andrew Saunders, of Yonkers, in the county of Westchester and State of New York, have invented an improvement in nipple-chucks, of which the following is a specification:

In the manufacture of screw-nipples it is usual to first form a thread upon one end of a pipe of any convenient length, to then cut off the end portion of the pipe to provide what may be termed a blank, one end of which has already a screw-thread formed upon it, while the other requires manipulation by a tedious, slow, and imperfect operation to provide a similar thread thereon, the difficulties incident to this arising from the small length of the blank or half-formed nipple and the crude nature of the devices used in forming the second thread upon it. My invention consists in a special combination of parts constituting an improved machine, whereby the hereinbefore-indicated forming of the thread upon the smooth end of the blank may be performed with very great speed and facility, and without loss of time by stoppage of machinery, a portion of the invention, moreover, being adapted for use in making reducing bushings, so called, and similar metallic articles.

Figure 1 is a side view and partial vertical longitudinal sectional view of an apparatus constructed according to my invention. Fig. 2 is an end or front view of the same; and Fig. 3 is a side view, showing a modification of the same.

A is a shaft capable of rotation—as, for example, the mandrel of a common lathe—but the end of which is bored axially to receive the cylindrical stem *a* of a pin, B, the outer extremity or head *b* of which is of conical shape, as shown in Fig. 1, immediately behind the head, in an annular shoulder, *a′*. A spring, C, behind the stem

A. SAUNDERS.

Chucks for Holding Pipe-Nipples.

No. 154,345.

Patented Aug. 25, 1874.

Fig 1.

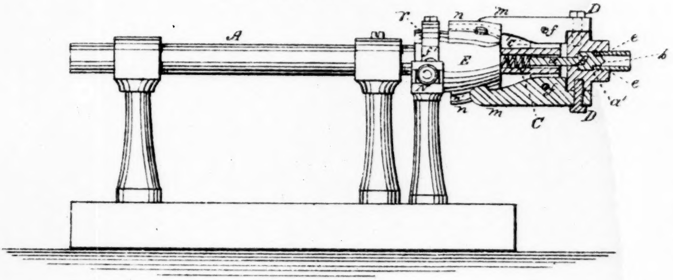


Fig 2.

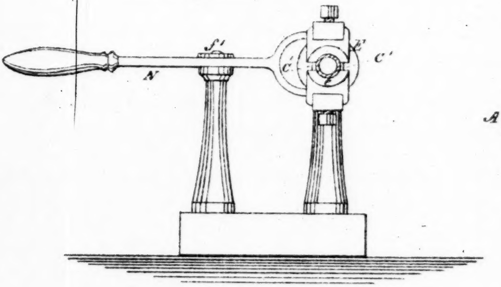
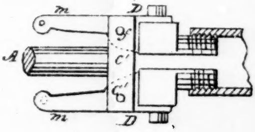


Fig 3.



No. 249.
Holland
v.
Shipley et al
p. 113.

Witnesses.

Van Wyck Wickes

William B. Phair

Inventor.

Andrew Saunders
per
James A. Whitney

a renders the pin B, on occasion, capable of an elastic inward movement. At the extremity of the shaft A are two cross-bars, C′, parallel with each other, and providing bearings at opposite sides of the shaft for the pivots *f* of the jaws D. These jaws are made, preferably, with detachable portions *g*, held to the pivoted part by set-screws *i*, in order that the device may be varied for different sizes or kinds of work; but, when preferred, each jaw may be made wholly in one piece. The inner surface or face of each jaw is formed with teeth or oblique threads at *e* in Fig. 1, the said threads corresponding in size, pitch, and general contour with the threaded end of the nipple-blank to be held thereby. Each jaw has an inwardly-extending shank or arm, *m*, which arms *m* pass upon opposite sides of a sleeve, E, capable of a longitudinal but not a rotary movement upon the shaft A, the contiguous surfaces of the sleeve being inclined in such manner that when the sleeve is moved outward toward the jaws the latter will be compressed or brought toward each other. Fixed upon opposite sides of the aforesaid sleeve, and in suitable relation to the aforesaid arms, are radial flanges or wings *n*, longitudinal upon the sleeve and parallel to the innermost portions of the arms *m*. In one side of each wing, and at the same inclination as the adjacent inclined surfaces of the sleeve, is a groove, *n′*. Lateral studs extend from the end of each arm *m* into the adjacent groove *n′*, so that when the sleeve is moved in a direction away from the jaws the inclined outer sides of the grooves will bring the arms *m* inward, and consequently spread or bring apart the jaws. The longitudinal movement is given to the sleeve by a lever, N, working on a vertical pivot, *f*, and forked to straddle the sleeve, as shown in Fig. 2, each arm of its fork having an inwardly-projecting stud, fitting into an annular circumferential groove, *r*, provided in the inner end of the sleeve, so that, by moving the lever in one direction or the other, the jaws may be brought toward or from each other, as the case may be. Rotation is given to the shaft A by any suitable or appropriate means.

In using the apparatus, the blank, provided as hereinbefore set forth, is thrust with its threaded end inward, or first, and its bore coincident with the conical head of the pin B, and its squared end against the shoulder *a′*. By this means the blank is properly centered and squared to its place, with its axis practically coincident with that of the shaft A. The jaws are then brought together to gripe the threaded end of the blank between them as the obliquely-threaded surfaces of the jaws come in contact with the thread on the blank. The latter, being capable of a slight longitudinal
114½ movement permitted by the elastic or yielding character of
the pin B, is enabled to adjust itself to the jaws, the teeth or threads of the latter slipping smoothly into the spaces between the threads in the blank, instead of striking rigidly upon the threads themselves, as would be likely to occur if the blank had no possibility of longitudinal self-adjustment. Thus clamped by the jaws, with its plain unfinished or unthreaded end projecting therefrom, as indicated at *m* in Fig. 1, said end of the blank may be subjected to the action of any suitable screw-cutting mechanism, to cut or provide

the screw-thread thereon, as required in the completion of the nipple. When this is accomplished the jaws are spread by a reverse movement of the lever N, and the finished nipple drops out, and, without stopping the rotation of the jaws, may be replaced by a blank to undergo the same operation, and so on in succession. When the blank has an internal instead of external thread, the jaws are modified in construction, as represented in Fig. 3, their oblique threads or teeth being formed upon their outer surfaces, so that the jaws, being thrust within the threaded ends of the blank, and expanded by the proper movement of the lever, will gripe the same from the inside, and with an outward pressure to hold it in due relation with the mechanism employed to thread the opposite or outer end of the blank to complete the work.

In the bringing to proper size and contour of plain articles, such as collars and the like, the jaws may be made with plain holding-surfaces and actuated by the mechanism set forth, and in such cases will be found to perform in a very efficient and satisfactory manner.

What I claim as my invention is—

The improved nipple-chuck formed and constituted by the expanding griping-jaws, provided upon a shaft capable of rotation, and constructed with oblique teeth corresponding to the threads of the screw-surface to be held, and concentric therewith; the sliding centering-pin, made elastic by the spring behind it, and formed with a conical head; and the sliding actuating-sleeve, provided with inclined grooves, connected with the arms *m* of the jaws, to operate the same, the whole being combined and arranged for operation substantially as and for the purpose herein set forth.

ANDREW SAUNDERS.

Witnesses:
THEODORE FITCH.
WM. B. PHAIR.

(Here follows diagram marked p. 115.)

116 UNITED STATES PATENT OFFICE.

EDWARD TYRRELL, of Cincinnati, Ohio.

Pencil-Holder.

Specification forming part of Letters Patent No. 290,291, dated December 18, 1883. Application filed September 5, 1883. (No model.)

To all whom it may concern:

Be it known that I, Edward Tyrrell, a citizen of the United States, and a resident of Cincinnati, in the county of Hamilton and State of Ohio, have invented certain new and useful improvements in pencil-holders, of which the following is a specification.

The object of my invention is to provide a lead-pencil holder which can readily be adjusted to the use of different sized leads, and

(No Model.)

E. TYRRELL.

PENCIL HOLDER.

No. 290,291. Patented Dec. 18, 1883.

Fig. 1.

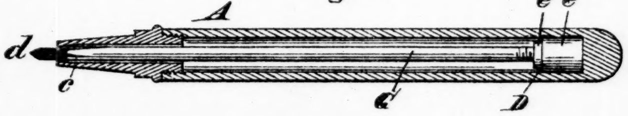


Fig. 2.

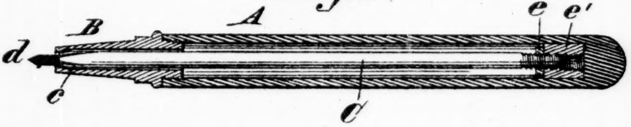


Fig. 3.

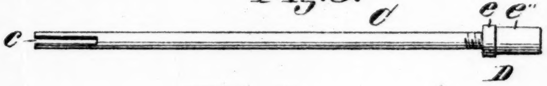
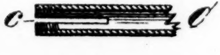
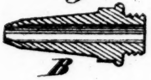


Fig. 4.



No. 249.
Holland
v.
Shipley et al } p. 115

Fig. 5.



Attest
Jno. E. Jones
J. A. Rutherford

Inventor
Edward Tyrrell,
by Wood & Boyd
his Attorneys &c.

which, at the same time, is cheap, durable, and convenient, all of which is accomplished as illustrated in the accompanying drawings.

Figure 1 is a central longitudinal section of my improvement, with the adjusting-nut shown in elevation. Fig. 2 is a similar view with the nut in section. Fig. 3 is a plan of the lead-tube and nut, and Fig. 4 is an enlarged broken section of the lead-tube. Fig. 5 is a longitudinal section of the holder-point.

A represents the tube or barrel of the pencil-holder, which is preferably made of guttapercha. It is shown as made with a solid head. It may be provided with a movable cap.

B represents the removable holder-point, the bore of which is made to converge, so as to be of smaller diameter at the point and gradually increasing in size inwardly.

C represents the adjustable lead-tube. It is adjustably connected to the holder by means of screw-threads at its rear, which engage with female threads cut in the adjusting-nut D, which nut seats in the bore of the holder.

c represents slots cut in the forward end of tube C.

In order to more effectually hold the lead in the tube when the forks are clamped, I cut a screw-thread upon the interior of the point of the lead-tube C, as shown in Fig. 4. Owing to the elastic character of the metal and the necessity of having the elasticity preserved, these serrations must be made with a tap-tool which will cut the same in the interior of the cylinder without materially disturbing the metal. These threads may be cut before the tube is slotted, or afterward, by providing a suitable outside clamp or ferrule. The slotting of the tube allows the lips or fingers at the forward point to be compressed to grasp and hold the lead. By adjusting tube C forward or backward in its adjusting-nut D, the end of the tube is set in any desired relation to the converging bore of point B to correspond with the size of lead to be employed, and when point B is screwed on the holder the points of tube C are compressed and grasp the lead *d* and hold it fast for use. The tube C can be adjusted to the size of lead by removing the point B of the holder and turning the tube C to lengthen or shorten it, as desired. The lead is adjusted by simply loosening the point B, when it is free to slip forward or backward the required distance, when point B is tightened and the lead is grasped, as before stated. The nut D can be made to fit the bore of tube C and sufficiently tight to be held in place by friction alone, or it may be feathered, so as to avoid the necessity of removing the tube and nut for adjustment of the tube C; but I have the nut D made of two sections, *e é*, the large section being made of rubber and fitting the bore of the pierced holder and section *e* being made of hard rubber forming a joint-nut to prevent the tube C from turning. When made in this manner, the tube C and adjusting-nut are removed from the holder for adjusting the tube to the size of lead.

In Fig. 3 the joint-nut is shown as fitting the bore of the pencil-holder, while in Figs. 1 and 2 the joint-nut is shown smaller. Thus the modes of construction are equivalent one to the other.

An obvious mode of adjusting tube C would be to have a removable head with tube C projecting through the nut to be turned from the rear when the cap is removed. Such a construction is embraced in the first clause of claim herein.

I claim—

1. A lead pencil composed of the holder A, point B, adjustable tube C, and nut D, all arranged and combined substantially as herein set forth.

2. In a lead pencil, the combination of the holder A, with the extensible tube C and adjusting-nuts *e é*, substantially as herein set forth.

116½ 3. In a lead pencil, the combination, with the holder A, of an adjustable tube C, having extension-cap *e*, adapted to receive and firmly hold different-sized leads within the point B, having the converging bore at its point, substantially as herein set forth.

4. In a lead pencil, the combination of a barrel, A, adjustable lead-tube C, provided with slots *c*, and having its interior forward end screw-threaded, and the sleeve B, all substantially as and for the purpose herein set forth.

In testimony whereof I have hereunto set my hand.

EDWARD TYRRELL.

Witnesses:
JNO. E. JONES.
A. GLUCHOWSKY.

117 And afterward, to wit, on the eleventh day of May, in the year of our Lord one thousand eight hundred and eighty-five, an entry was made upon the journal of the court aforesaid in the cause, and which said journal entry so as aforesaid made is clothed in the words and figures following, to wit:

Journal Entry, W. 118.

JOHN HOLLAND
vs.
MORRIS S. SHIPLEY *et al.*
} Equity. No. 3656.

This cause came on to be heard on the pleadings, the evidence herein, and the arguments of counsel, and the court having been fully advised in the premises, finds the equity with the defendants, and said bill is dismissed at complainant's costs.

Complainant having prayed an appeal the same is hereby allowed and the appeal bond is fixed in the sum of two hundred and fifty dollars.

118 And afterward, to wit, on the fifth day of June, in the year last aforesaid, there was filed in the said the clerk's office of the court aforesaid, in this cause, by the said complainants herein aforesaid, their certain appeal bond herein, and which said appeal

bond so as aforesaid filed is clothed in the words and figures as follows, to wit:

Appeal Bond.

Circuit Court of the United States, Southern District of Ohio, W. D.

JOHN HOLLAND
vs.
SHIPLEY-TYRRELL MANUFACTURING COMPANY.

Know all men by these presents that we, John Holland, as principal, and Philip E. O'Donnell are held and firmly bound unto The Shipley-Tyrrell Manufacturing Company in the sum of two hundred and fifty dollars, to be paid to the said Shipley-Tyrrell Manufacturing Company, its successors; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

119 Sealed with our seals. Dated this 5th day of June, 1885.

Whereas the above-named John Holland has taken out an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named John Holland shall prosecute his said appeal to effect and answer all costs if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) JOHN HOLLAND. [SEAL.]
Do. PHILIP E. O'DONNELL. [SEAL.]

Sealed and delivered in presence of—
(Signed) F. COLTON.
" W. S. HOLMES.

The above security is approved.
(Signed) GEORGE R. SAGE,
District Judge of the United States,
S. D. O., Sitting as Circuit Judge.

(Oath of security attached.)

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Phillip E. O'Donnell, one of the sureties above named, 120 do solemnly swear that after paying my just debts and liabilities I am worth five thousand dollars in real estate in my own name, situate in the county of Hamilton, in said district.

(Signed) PHILIP E. O'DONNELL.

Sworn to before me this 5th day of June, 1885.
[L. S.] (Signed) ROB'T C. GEORGI,
Deputy Clerk U. S. Circuit Court, S. D. O.

121 And afterward, to wit, but on the same day and year last aforesaid, there was issued out of the said the office of the clerk aforesaid in this cause our certain writ of citation to appellee, directed to the said defendants herein, the said Morris S. Shipley and Edward Tyrrell, doing business as the Shipley-Tyrrell Manufacturing Company as aforesaid, and which said writ of citation to appellee, so as aforesaid issued and directed, and with the return of the marshal serving the same thereon endorsed, as made and returned into the said the clerk's office of the said court by the marshal aforesaid on the ninth day of June, in the year last aforesaid, is hereto attached as follows, to wit:

122 *Citation.*

United States of America, *ss:*

To Morris S. Shipley and Edward Tyrrell, doing business as the Shipley-Tyrrell Manufacturing Company, Greeting:

Whereas John Holland has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of Ohio, made in favor of you, the said Morris S. Shipley *et al.*, and has filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Cincinnati, in the sixth circuit, this 5th day of June, in the year of our Lord one thousand eight hundred and eighty-five.

GEO. R. SAGE,
District Judge S. D. O., Sitting and Holding the
Circuit Court for said District, no Circuit
Judge or Circuit Justice Being Present.

122½ [Endorsed:] 185. 5–5–'85. United States circuit court, S. D. O., W. D. No. 3656. John Holland *vs.* Shipley-Tyrrell M'n'f'g Co. Citation to appellee. Filed June 9th, 1885. B. R. Cowen, clerk.

Rec'd this writ at Cincinnati, O., June 5th, 1885, and on the same day served the same in Cincinnati, O., as follows, on the within-named Morris S. Shipley by delivering a true copy hereof to him personally. Edward Tyrrell not found in this district.

LOT WRIGHT, *U. S. M.,*
By C. E. TWIFERD, *Dep.*

Service	2 00
Copy	50
1 mile	06
	$2 56

123 UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio:

I, B. R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing is a true and correct transcript of the record and proceedings in the cause therein mentioned as the same remain of record and on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court aforesaid this 16th day of June, A. D. 1885, and in the 109th year of the Independence of the United States of America.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

(Signed) B. R. COWEN, *Clerk*,
By ROB'T O. GEORGI, *Deputy*.

Endorsed on cover: S. Ohio C. C. U. S. No. 249. John Holland, appellant, *vs.* Morris S. Shipley & Edward Tyrrell, doing business as the Shipley-Tyrrell Manufacturing Company. Filed July 13, 1885.

127-396

Office Supreme Court U. S.
FILED
APR 2 1888
JAMES H. McKENNEY

Supreme Court of the United States,

OCTOBER TERM, 1887.

JOHN HOLLAND, *Appellant*, vs. MORRIS S. SHIPLEY, EDWARD TYRRELL, Doing Business as The Shipley, Tyrrell Manufacturing Co.	No. 249.

BRIEF FOR APPELLANT.

GEORGE J. MURRAY,
COUNSEL FOR APPELLANT.

C. Souer & Co., Printers, Cincinnati.

Supreme Court of The United States.

October Term, 1887, No. 249.

JOHN HOLLAND,
Appellant,
vs.
MORRIS S. SHIPLEY,
EDWARD TYRRELL,
Doing Business as
The Shipley, Tyrrell Manufacturing Co.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

This cause is brought here on appeal from the decision of the Circuit Court dismissing the bill of complaint.

The action was brought in equity upon letters patent No. 292, 313, granted to the complainant, appellant here, John Holland, January 22d 1884.

The prayer of the bill is for the usual decree for injunction and accounting. The subject of the patent is: an improvement in lead holders for pencils. The distinguishing feature of the invention consists in "making a fine screw thread within the lower end of the tube before it is slotted to form the clamping fingers." The claims are as follows:

1. "As a new article of manufacture, a lead tube for pencils consisting, substantially as before set forth, of a tube provided at one end with internal or female threads and two or more longitudinal slots to form threaded fingers."

2. "The combination, with the lead tube provided at one end with internal threads and two or more longitudinal slots, of a clamping sleeve adapted to be adjusted upon the slotted end of the tube to press the threaded fingers upon a lead, substantially as described."

HISTORY OF CASE IN CIRCUIT COURT.

Bill of complaint filed June 20, 1884.

Separate answers of defendants, Morris S. Shipley and Edward Tyrrell, filed September 1, 1884.

Replication filed September 18, 1884.

Testimony: *prima facie* case of complainant taken and filed December 13, 1884.

No testimony was taken by respondents within the time fixed by Rule 69.

The time for taking testimony was not enlarged. No extension of time was given or even applied for.

At the call of the equity docket at the beginning of the April term of 1885, the case was set for hearing and the hearing fixed for May 7, 1885.

After the case was set for hearing, to wit: on April 25, 1885, defendants moved for leave to file patents set up in answer, and also copy of the file wrapper and contents in the matter of the application of the complainant for the patent sued on."

Notice of this motion was served on complainant's solicitor April 22, 1885, who reserved all right to exceptions. (Record, p. 19).

The motion was resisted but allowed by the Court, and thereupon the patents and file wrapper and contents were filed. (Record, p. 20).

The cause was heard and a decree entered May 11, 1885, finding the equity with defendants, and the bill dismissed at complainant's costs.

Complainant prayed an appeal which was allowed, and the appeal bond fixed.

Record, p. 48.

ERRORS.

1. The Circuit Court erred in allowing defendant to introduce the patents and exhibits in evidence after the time for taking testimony had expired and the case was set for hearing, and in considering the evidence so irregularly introduced.

2. The Court erred finding from the evidence the equity with defendant, and in dismissing the bill.

3. The allegations in the bill of complaint are sustained by the proofs, and substantially admitted in the answers filed by defendants. The Court erred in not so finding and ordering a decree as prayed for in the bill of complaint.

ABSTRACT OF PLEADINGS.

The bill of complaint is in the usual form. It recites the invention by John Holland of the improvement in lead holders for pencils, and the grant of letters patent therefor upon application duly made.

The infringement by defendants of the said patent, and prays for the usual injunction and accounting.

RESPONDENTS' ANSWERS.

The answer of Morris S. Shipley admits that defendant's are engaged in the manufacture and sale of pencils and pencil holders, and that prior to the date of complainant's patent they made and sold pencil holders embodying the invention patented to the complainant, but denies that the pencil holders they had then on hand, or made and sold since the date of complainant's patent infringe said patent.

Alleges that the thing shown and described in complainant's patent did not involve invention, within the meaning of the patent law, but was an old and well-known device in prior public use on various articles used in the industrial arts in the United States. And alleges that the *equivalent* of the said patented device is shown and described in various patents of the United States (naming six patents) and various other patents and books (not mentioned).

THE ANSWER OF EDWARD TYRRELL.

Admits the grant of the letters patent 292, 313 to Holland. Denies that Holland was the true, original and first inventor of the improvements claimed, and charges that Holland surreptitiously obtained the patent for that which he, Tyrrell, had invented, and for which his letters patent were granted December 18, 1883. Admits the manufacture and sale of pencil holders embodying the invention patented to complainant prior to the date of the patent sued upon, but denies that those they "now have on hand" and are offering for sale, or those they have made and sold since the date of said patent infringed said patent.

PROOFS.

Complainant in support of his case offered in evidence printed copy of the specification and drawings of his patent "Exhibit A," p. 16, Record, under stipulation that the same might be received and read at the hearing with the same force and effect as if duly certified. (Record, p. 18).

Introduced two witnesses, the first, C. F. Rapp, who produced a pencil case "Rapp Exhibit Shipley and Tyrrell pencil case" which contains every feature of patent sued upon, and also produced "Complainant's exhibit, Rapp No. 2," printed at pages 12 and 13 of Record, and testified that he purchased the said pencil case from the defendants at their store in Cincinnati, on the 22d day of April, 1884.

At the same time that he purchased the pencil case he received several copies of the circular, "Rapp, No. 2," which is a correct representation of the infringing device, and is the same as the device shown and described in the Tyrrell patent referred to in Tyrrell's answer and printed at p. 46 of Record.

The answer of Tyrrell admits this contains the invention claimed in complainant's patent.

Joseph Schwab is a pencil case maker, and was in the employ of defendants from October 12, 1883, to about August 1, 1884. He commenced to make pencil cases having the slotted and internally threaded lead holding tube for defendants in the latter part of October, 1883, and made the last ones about the middle of April, 1884. (Ans. 5-10, Record, p. 14).

There is and can be no doubt from the testimony that the device "Rapp Exhibit, Shipley & Tyrrell pencil case" was made and sold by defendants subsequent to the date of complainant's patent, and prior to the bringing of the suit, and that the defendants were regularly engaged in selling such pencil cases. The circulars given to Rapp for distribution and the testimony of Schwab is conclusive on this point.

It is equally clear from an examination of the defendants' device that it embodies the invention covered by the two claims of complainant's patent.

Complainant therefore made a clear *prima facie* case under the rulings of this Court.

Imhauser vs. Buerk, 101 U. S. 647.

Bates vs. Coe, 98 U. S. 337.

Blanchard vs. Putnam, 6 Wall, 420.

Complainant was entitled to a decree in accordance with the prayer of the bill, as no testimony was offered to overcome the *prima facie* case made.

The Court had no right to consider the exhibits irregularly offered by defendanes. The motion should have been overruled.

Sharon vs. Hill, 22 Fed. Rep. 28.

Peterson vs. Simkins, 25 Fed. Rep. 486.

In the latter case, on motion for rehearing Judge Treat states that he had gone carefully over the decisions of the Supreme Court, and found that his previous action in overruling the defendont's motion (which was the same as the motion here) was fully sustained, and refused to even allow defendant time to take further testimony.

But even assuming that the testimony offered by the defendants had been regularly introduced, and was properly considered by the Court, the decree was clearly wrong, as the testimony failed to overcome the *prima facie* case made by the patent.

In Coffin vs. Ogden, 18 Wall, 120, the Supreme Court has said :

"The invention or discovery relied upon as a defense must have been complete and capable of producing the result sought to be accomplished, and this must be shown by defendant. The burden of proof is on him, and every reasonable doubt should be resolved against him. The law requires not conjecture, but certainty.

CONSTRUCTION OF THE PATENT.

A patent is to be construed with reference to the state of the art at the time the invention was made. The exhibits offered by defendants fairly represent the state of the art. They were all before the Officers of the Patent Office, and fully considered by them pending the application upon which complainant's patent was granted. That these disinterested, sworn official experts found everything tending to limit applicant's invention is evidenced by the fact that defendants' counsel found nothing additional thereto when the answer of Shipley was filed, for nothing additional is set up in the answer. The defendant, Tyrrell, is a skilled pencil case maker, was complainant's foreman in this branch of his factory when this invention was made by Holland. He evidently knew nothing that had been in public and common use to limit the invention, or he would have communicated it to his counsel. This skilled mechanic in the particular branch of art to which this invention relates would not swear that the patents introduced in evidence either anticipated or even limited the invention in suit, hence the separate instead of a joint and separate answer. He not only would not swear that the device in issue was lacking in invention, but does swear to the contrary in his answer, to wit: that the *invention* was in fact made by himself, but he would not take the stand and swear that he, and not Holland, "was the true, or original, and first inventor."

The specification disclaims the construction shown in these patents. The inventor has therefore complied fully with the very letter of the law in particularly distinguishing his invention from what had gone before it.

His first claim is a lead tube for pencils provided with an internal or female thread, and two or more longitudinal slots to form threaded fingers.

His second claim is to the same tube having the interiorly threaded fingers, in combination with a clamping sleeve adapted to be adjusted upon the slotted end of the tube to press the fingers upon the lead.

The well-known lead holders in use were well-known to complainant, as were also their defects. The difficulties he had to overcome and which were common to the old style of lead holders were; first, that the lead, being itself a lubricant, was liable to slip back in the act of writing, especially after the pencil had been used for a time, when the fingers were smooth and straight, and if the lower ends of the fingers were inclined inward when the sleeve was tightened up, the fingers, which were in fact pincers, would frequently cut off the point when it was tightened upon the sleeve, and if the lead withstood that test as it would if hard, it was still liable to break in the act of writing, when the pencil was held in an inclined position.

These facts are well and truly stated at the beginning of his specification, and the state of the art fully recognized.

It should be noted in this connection that these statements were in his specification as originally filed, showing that he was at that time quite conversant with the state of the art and the defects in the pencils of this class in common use at that time.

Tyrrell also knew the trouble with pencil points as is evidenced from his remarks to Schwab when he brought the first improved pencil from Holland's office and showed it to him. He said, "Joe, we will have no more trouble with our points." (Schwab's XA. 25–28, Record, p. 15).

None of the patents show the lead holder of the first claim, nor the combination of the second claim. The Faber patent is the pioneer in this class of pencils. It is upon this pencil that all the subsequent improvements were based. This had the split tube lead holder, smooth upon the inside, and tapered at the end to allow the sleeve to compress the split ends of the tube to grasp the lead. This holder would allow the "lead to slip back within the tube when pressed upon in the act of writing." This is one of the defects Holland's invention was intended to cure, as stated in his specification This defect it does cure perfectly.

Cleveland's patent has a lead holder like Faber's, except that his "tube is slightly contracted at the end to grasp the lead," or, as Holland says in his specification, these fingers "terminate at their ends in sharp inward projections or claws which frequently break the lead when the clamping sleeve is tightened up, and when tightened carefully, the lead often breaks in use when writing with the pencil inclined." This is the second defect which Holland undertook to cure and which he overcame completely.

The patent to Kamis shows simply a series of spring clamps connected at their inner end to a sliding ring. It is simply the old crayon or pencil holder pushed bodily into a tube. It is intended to hold the common pencil having the lead encased in wood. The serrated fingers are for the purpose of preventing the pencil from dropping out. The various parts of this device are combined and arranged and operate in a different manner from Holland's device, and for a different purpose.

Sommers' patent shows spring actuated toggle-jointed levers, operating through an enlarged part of the lead tube to grasp the lead at a considerable distance above the writing point. It has not a single element of Holland's invention.

The Pierce patent has no such lead holder. It has no interiorly threaded fingers, nor fingers of any kind. It has simply a tube with a tap formed in the end whereby a thread is cut upon the inner end of the lead to be screwed into the tube. It is not the lead holder of the first claim. The holder is not slotted. The lead can not be made to move back in it. It has no clamping sleeve of any kind. Besides, it is clearly an inoperative and impractical device.

Saunder's patent chuck for holding pipe nipples conveys not the remotest suggestion of complainant's invention. It is intended for holding the screw threaded end of small nipples and "so called reducing bushings," while the opposite end is dressed or threaded. The chuck has expanding grasping jaws formed by toggle-jointed levers; the jaws have oblique teeth or threads corresponding with the thread on the nipple. The whole object and purpose of the chuck is to grasp the screw threaded end of the nipple without injuring the threads already formed.

It will be seen that none of the references show, describe or suggest the lead holder of claim 1, and this being an element of claim 2, that claim is also not anticipated.

In the language of Mr. Justice Grier, "None of these devices would infringe the claims of this patent if used, nor can they be invoked to destroy it." (Stainthorp vs. Elkinton, 1 Fish. 349.)

It is not necessary to examine the state of the art outside of the patent itself, for the patent sets it out fully. Everything is written out in the specification.

The file and contents of letters patent are frequently introduced in evidence to limit the scope of the patentee's claims. It is well understood that if, in the prosecution of his case before the Patent Office, the inventor limits his claim in view of references cited, whether these references be pertinent or not, the Court will not broaden the claim to make it cover an infringer. The patentee must stand by his claim as made.

Viewing the file, wrapper and contents of complainant's patent his claims are strengthened rather than weakened. The claims are broader than the one originally asked After each rejection upon the references in the record Holland asked for broader claims, the very ones here in issue, and demanded that they be allowed or the case put in shape for appeal. (Record, p 26).

Upon this the examiner invited the attorney to a consultation. The interview seems to have convinced the examiner, for he allowed the claims without appeal.

There is nothing, therefore in the conduct of complainant, or of his attorney, in the prosecution of his application in the Patent Office to prevent the Court from giving the claims of his patent such liberal construction as will cover his actual invention. But a liberal construction is not necessary in this case, the patent being *prima facie* evidence of novelty and utility, and as the device covered by it produces a new and useful result, never attained before, or removes a defect or inconvenience never before overcome, the presumption is conclusive that what the patentee did was an invention within the meaning of the patent law.

Mr. Justice Bradley says in Loom Co. vs. Higgins, 105, U. S. 580: "It may be laid down as a general rule, though perhaps not an invariable one, that if a new combination and arrangement of known elements produce a new and beneficial result never attained before, it is evidence of invention."

Mr. Walker, in his work, commenting upon this language, says: "The exception to this rule which Justice Bradley contemplated doubtless refers to cases the result wherein was never before attained only because it was never before desired."

This case does not come within that exception, for the patents introduced prove that ever since the well-known Faber pencil was introduced, shortly after the date of the patent in the record, 1861, the result attained by Holland's invention was desired, and many very clumsy and unsuccessful efforts were made to overcome it, such as the "sharp inward projections or claws" of Cleveland, and the toggle-jointed levers of Sommers, to say nothing of the efforts of defendants themselves to appropriate the invention so soon as Holland introduced it.

Mr. Walker statas the true rule in Section 26 of his work on Patent Law:

"But if a particular result was long desired and sometimes sought, but never attained, want of invention can not be predicated of a device or process which first reached that result, on the ground that the simplicity of the means is so marked that many believe they could readily have produced it if required. That is the opinion of many relevant to some real inventions, because solved problems seem easy to persons who could never have solved them, and true inventions sometimes seem obvious to persons who could never have produced them. * * Facts can not be proven by *a posteriori* opinion, when that opinion is inconsistent with *a priori* attempts and failures."

That a necessity for this invention had long been felt, that prior to the invention great trouble was experienced with pencil points even by manufacturers, and that Holland's invention attained the desired result, and remedied the previous defects, are proven by Tyrrell's remark to the witness, Joseph J. Schwab, when the first showed Holland's invention to him.

Tyrrell said truthfully at that time, "Joe, we will have no more trouble with our points." This answer was drawn out by defendants' counsel on cross examination, and in relation to matter not touched upon in the direct examination. It was not proper cross-examination. Defendants' counsel made the witness his own, and defendants are bound by his answer.

The answer of Tyrrell alleges in terms that the device of Holland's patent involves invention. It does not allege that the invention was previously known or used, or that the device is shown or described in any previous patents, although he must have known of those introduced by his counsel and named in the answer of his co-defendant.

The answer of Shipley was very carefully drawn by his counsel, but is probably as strong as he was willing to swear to. It is equivocal. It does not, as is usual, positively allege, "That the same thing claimed in the said letters patent in all material and essential features, and the same principle and combination were, previous to the alleged invention fully described and set forth in certain letters patent," etc. But only alleges "that the equivalent of said patented device is shown and described in various patents of the United States." This is not an allegation that the patented device is anticipated. Each and every pencil is the equivalent of every other one, as a writing instrument. A later device may be a patentable improvement upon an earlier patented one, and yet be an equivalent for, and an infringement upon the patent. As in this instance, all patents in the record except Faber's might be infringements upon his patent if it were now in force, and therefore equivalents of it, and yet none of them be anticipated by it. The Tyrrell patent describes defendants' device. It is an equivalent for Holland's although the adjustable tube to which his claims are limited may be an improvement.

The answer of Tyrrell alleges that he and not Holland was the inventor, and that Holland surreptitiously obtained the patent while he (Tyrrell) was using reasonable diligence in adapting and perfecting the same. This allegation is proven to be false. He was foreman for Holland when the invention was made, and long after Holland applied for the patent here in suit. Holland's application was filed March, 1882, and the patent granted January 22, 1884. Tyrrell's application was filed September 5, 1883, and patent granted December 18, 1883. He was therefore in the Patent Office at the same time with Holland, and had he made claim then to the invention here in suit could have had an interference, and if he were the first inventor, have defeated Holland, and obtained a patent with the claims here involved. Instead of doing which, he practically disclaimed in favor of Holland, and took out his patent with claims for the adjustable feature which he added to Holland's pencil, although in his specification he shows and described the Holland invention, laying particular stress upon the advantages of the interiorly threaded clamping fingers.

The claims of Holland are limited to the interiorly threaded clamping fingers at the end of his lead tube. These are easily and quickly produced, and are undoubtedly a patentable improvement upon what was known at the time he made the invention.

After an invention is made it is easy to see how it was done, and it may be a subject of surprise why a thing apparently so simple was not accomplished before, but some of the most valuable inventions were of this class.

" A patent should be construed in a liberal spirit to sustain the just claims of the inventor. * * Liberality rather than strictness should prevail where the fate of a patent is involved, and the question to be decided is whether the inventor shall hold or lose the fruits of his genius and labors." (Rubber Co. vs. Goodyear, 9 Wall, 788).

The fate of the patent is involved here. If it is valid a clear case of infringement is made out by the proofs, and admitted by the answers.

It is submitted that the decree of the Circuit Court should be reversed and a decree for injunction and account ordered as prayed for in the bill of complaint.

GEO. J. MURRAY,

Counsel for Appellant.

124-396

Supreme Court of the United States.

OCTOBER TERM, 1887.—No. 249.

HOLLAND
vs.
SHIPLEY. } *Chancery.*

BRIEF FOR APPELLEES.

WOOD & BOYD,
Counsel.

Printed by James Barclay, 124-132 Canal St., Cincinnati, O.

claims here involved. Instead of doing which, he practically disclaimed in favor of Holland, and took out his patent with claims for the adjustable feature which he added to Holland's pencil, although in his specification he shows and described the Holland invention, laying particular stress upon the advantages of the interiorly threaded clamping fingers.

The claims of Holland are limited to the interiorly threaded clamping fingers at the end of his lead tube. These are easily and quickly produced, and are undoubtedly a patentable improvement upon what was known at the time he made the invention.

After an invention is made it is easy to see how it was done, and it may be a subject of surprise why a thing apparently so simple was not accomplished before, but some of the most valuable inventions were of this class.

"A patent should be construed in a liberal spirit to sustain the just claims of the inventor. * * Liberality rather than strictness should prevail where the fate of a patent is involved, and the question to be decided is whether the inventor shall hold or lose the fruits of his genius and labors." (Rubber Co. vs. Goodyear, 9 Wall, 788).

The fate of the patent is involved here. If it is valid a clear case of infringement is made out by the proofs, and admitted by the answers.

It is submitted that the decree of the Circuit Court should be reversed and a decree for injunction and account ordered as prayed for in the bill of complaint.

GEO. J. MURRAY,

Counsel for Appellant.

124-396

Supreme Court of the United States.

OCTOBER TERM, 1887.—No. 249.

HOLLAND
vs.
SHIPLEY. } *Chancery.*

BRIEF FOR APPELLEES.

WOOD & BOYD,
Counsel.

Printed by James Barclay, 124-132 Canal St., Cincinnati, O.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.—No. 249.

HOLLAND
vs. } *Chancery.*
SHIPLEY.

BRIEF FOR APPELLEES.

STATEMENT.

This brief is written without having seen the appellant's specifications on appeal.

The appellant, who was the complainant below, filed his bill against the appellees, Morris S. Shipley and Edward Tyrrell, for infringement of letters patent No. 292,313, issued to the complainant, January 22, 1884, for an improvement in "lead holder for pencils," to which the defendants answered separately, both denying infringement, and Shipley claiming that the alleged improvement did not involve invention or patentable novelty (p. 7); and Tyrrell claiming that the patent was surreptitiously and unjustly obtained for that which he was, in fact, the inventor of, and which he had used reasonable diligence in adapting and perfecting, and for which he had received letters patent No. 290,291, December 18, 1883 (p. 8).

Depositions were taken by the complainant, but only documentary proofs were offered by the defendants. (By leave of court, p. 20.)

The cause was heard by the Honorable Judge Sage, who delivered an oral opinion, deciding in favor of the defendants on all four of the points made, which were the same as we will hereinafter present to your Honors, and thereupon he ordered a dismissal of bill, as appears by the decree (p. 48).

POINTS.

I.

NO INFRINGEMENT.

The only sale there is any evidence of was made to the agent of the complainant, who made the purchase at the request of the complainant's solicitor.

The facts are testified to by the man employed to make the purchase. (Rec., p. 11.)

"A sale of the thing patented, to an agent of the patentee, employed by him to make the purchase, on account of the patentee, is not, *per se*, an infringement."

Byam *vs*. Bullard, 1 Curtis, 100.

Curtis on Patents, 4 Ed., Sec. 300.

It may be admitted that if it had been shown that the defendants had other similar pencils in stock which they were offering for sale, that the sale to the complainant was evidence of infringement, but no such evidence is in the record, and the sworn denials of the answers can not be overcome by inferences fairly drawn from the facts stated.

One other witness, J. J. Schwab, says that he was in the employ of the defendants from October, 1883, to August 1, 1884 (p. 13), and that he made a few pencil cases during that time, the last being made *about* the middle of April, 1884. (Ans. 9, p. 14.)

There is no evidence that these were ever seen by anybody else, or that they were ever offered for sale.

Apart from the uncertainty as to when the witness made the cases, it is only necessary to suggest that the answers denying any such manufacture, being sworn responses to the bill of complaint, can not be overcome by the uncorroborated testimony of *one* witness.

Story's Eq. Pl., 3d ed , Sec. 849*a*, and cases cited.

II.

ON THE FACE OF THE PATENT THERE IS NO INVENTION.

It is not necessary to give this court a definition of invention, to determine whether the complainant's improvement comes within the well-defined rules of this court as to what it is; it is only necessary to examine the specification forming part of his patent.

The patentee says, p. 16:

"The object of my present invention is to hold the lead or crayon in pencils from slipping back within the tube when pressed upon by the act of writing, without danger of breaking the lead.

"Lead-tubes now in common use are usually slotted at the lower end to form elastic clamping fingers, which fingers are closed upon the lead near its point end by a sleeve or a tube which moves longitudinally over the fingers. These fingers are either smooth upon the inside or terminate at their ends in sharp inward projections or claws. The first kind soon become so smooth that the lead slips back when borne upon in the act of writing, and the second frequently breaks the lead when the clamping-sleeve is tightened up, and when tightened up carefully the lead often breaks in use when writing with the pencil inclined. I overcome both these objections by making a fine screw-thread within the lower end of the tube before it is slotted to form the clamping-fingers."

And then at the end of the specification:

"I am also aware that it is old to provide the lead-holding tube of a pencil with an interior thread and a single slot."

Here are two admissions. First, that lead holders or lead tubes precisely like those of the patent in every respect, except that the fingers were not internally threaded, were old and well known; second, that lead-holding tubes, the fingers of which were internally threaded but provided with only one slit, were old and well known.

No new use is suggested for the patented improvement, and it is submitted that the threading of the fingers of the old holder having several slits in the same way that the old holder having one slit was threaded, or the slitting of the latter as the former had been, did not amount to invention, and it can not be contended that the claims depend on anything else for their novelty.

III.

NO INVENTION IN VIEW OF THE STATE OF THE ART.

The Faber patent of 1861 (p. 34) shows, describes and claims a lead-holding split tube and an adjustable clamping-sleeve substantially like that of complainant, with the exception of the internal serrations.

The Cleveland patent of 1876 (p. 36) shows these parts very much the same.

In the Kemmis patent of 1869 (p. 38) the clamps *C* which hold the lead are described as serrated.

In the Peirce patent of 1859 (p. 43) the end of the tube ***F*** which holds the lead is provided with an internal screw thread as shown in Fig. 3.

The Saunders patent of 1874 (p. 44) is for a chuck, but the interior surface of its movable jaws are serrated, for the purpose, as is described, of more securely holding the blank, and this is precisely the object the complainant had in view.

The transcript of the proceedings in the Patent Office in the matter of Mr. Holland's application, commencing on page 20 of the record, shows a peculiar state of facts.

The Examiner rejected the application upon references cited March 18, 1882 (p. 23). Then the applicant filed an amendment with an argument, to which the Examiner replies, June 18, 1882, (p. 24):

> "The amend claim presents nothing patentable over the references heretofore cited, particularly over Cleveland and Kemmis, there being no invention in serrating Cleveland's clamping fingers as shown in the patent to Kemmis."

The application remained in this condition for eleven months, when another argument was filed (p. 25), and was answered June 13, 1883 (p 25), by a new examiner, who cites additional references and says:

> "To internally screw thread the clamping jaws and to apply this construction to the clamping jaws of a pencil holder does not exhibit invention."

In October another amendment and another rejection appear (p. 26).

After which, on October 24 (p. 27), another amendment is made *preparatory* to appeal—no appeal was taken, but the application was transferred to another division.

Another amendment and another argument were filed, and in response the said examiner said (p. 30):

> "The novelty which is quite limited . . . . The only difference, in view of the references, consists of the internal threaded fingers, which have been before provided with the threads omitted."

After another amendment the patent issued with its present claims, but it is obvious that the last examiner must have overlooked the references cited by the other examiners who first had charge of the application, and the amendment which introduced the acknowledgment that "lead holding tubes of pencils with an interior thread and a single slot" were well known.

But whether the question be considered with reference to the opinions of the examiners whose action is recorded in the transcript or independently, we submit that in view of the art as disclosed there was no invention.

IV.

IF THERE IS ANY INVENTION IN THE THING CLAIMED THE DEFENDANT, TYRRELL, WAS THE INVENTOR OF IT.

The Tyrrell patent in evidence, dated December 18, 1883 (p. 46), shows and describes a slotted lead holding tube having its interior forward end screw threaded like the complainant's, but it is claimed in a novel combination.

The defendants did not examine any witnesses, but complainant's witness Schwab has testified as to his knowledge of the production of the holder, and, as we think, clearly shows that it was made by Tyrrell, as his answer avers.

This witness' deposition was taken December 13, 1884. Having been shown the defendant's pencil he is asked when